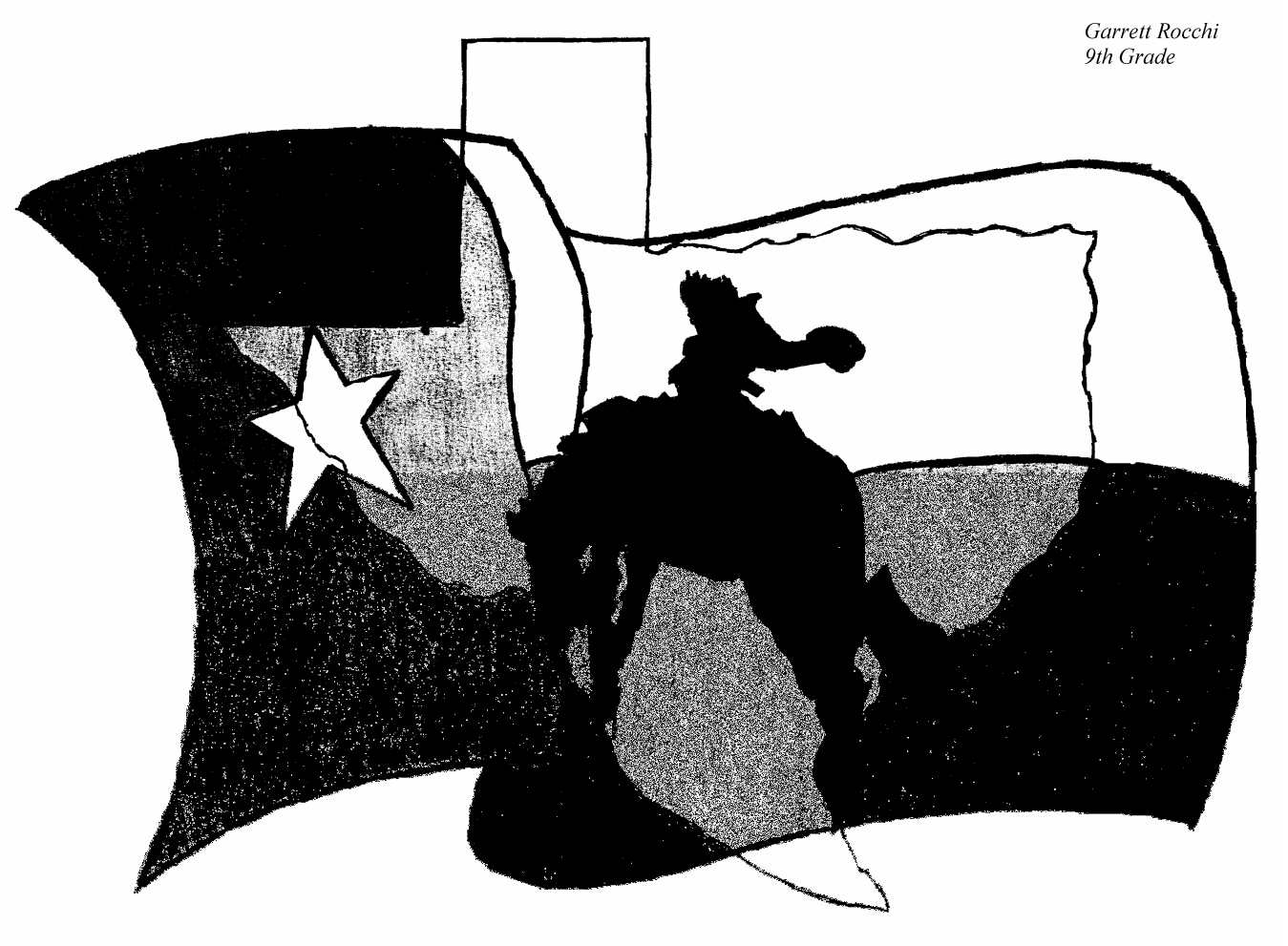
TEXAS REGISTER

Volume 32 Number 28 *July 13, 2007* *Pages 4299 - 4504*



Garrett Rocchi
9th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
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P.O. Box 13824
Austin, TX 78711-3824
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IN THIS ISSUE

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-3125

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that the severe storms, flooding, and tornadoes that occurred June 16-18, 2007, have caused a disaster in Cooke, Grayson, Lampasas, and Tarrant Counties, in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that threat.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 19th day of June, 2007.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200702816

♦ ♦ ♦

Proclamation 41-3126

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby amend my June 19, 2007, proclamation to include Bosque, Coryell, and Denton Counties, certifying that severe storms, flooding, and tornadoes that occurred from June 16-18, 2007 have caused a disaster in these counties.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that threat.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 22nd day of June, 2007.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200702817

♦ ♦ ♦

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinion

RQ-0592-GA

Requestor:

The Honorable Geoffrey Barr

Comal County Criminal District Attorney

150 North Seguin Avenue, Suite 307

New Braunfels, Texas 78130

Re: Whether a single permit for a "mass gathering" under chapter 751, Health and Safety Code, may be granted for multiple events (RQ-0592-GA)

Briefs requested by July 26, 2007

RQ-0593-GA

Requestor:

The Honorable Elizabeth Murray-Kolb

Guadalupe County Attorney

101 East Court Street, Suite 104

Seguin, Texas 78155-5779

Re: Authority of a county to assist in funding a generator to be leased to a radio station (RQ-0593-GA)

Briefs requested by July 26, 2007

RQ-0594-GA

Requestor:

The Honorable Armando R. Villalobos

Cameron County District Attorney

974 East Harrison Street

Brownsville, Texas 78520

Re: Proper method for filling vacancies on the Harlingen City Commission (RQ-0594-GA)

Briefs requested by July 27, 2007

RQ-0595-GA

Requestor:

The Honorable John R. Roach

Collin County Criminal District Attorney

210 South McDonald, Suite 324

McKinney, Texas 75069

Re: Proper distribution of money seized under chapter 59, Code of Criminal Procedure, prior to a final judgment (RQ-0595-GA)

Briefs requested by July 27, 2007

RQ-0596-GA

Requestor:

The Honorable Fred Hill

Chair, Committee on Local Government Ways and Means

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Authority of property tax consultant to act as agent for property owners under section 1.11, Tax Code

Briefs requested by July 30, 2007

RQ-0597GA

Requestor:

The Honorable Jane Nelson

Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Validity of the Texas Lottery Commission's recently adopted amendments to 16 TAC 402.300 (Request No. 0597-GA)

Briefs requested by July 30, 2007

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200702830
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: July 3, 2007

♦ ♦ ♦

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER I. WORK-STUDY STUDENT MENTORSHIP PROGRAM

19 TAC §§4.191 - 4.196

The Texas Higher Education Coordinating Board adopts, on an emergency basis, new §§4.191 - 4.196, concerning Work-Study Student Mentorship Program.

The new sections are adopted, on an emergency basis, pursuant to §2001.034 of the Government Code, which allows a state agency to adopt emergency rules if a requirement of state or federal law requires adoption of the rules on less than 30 days notice. Specifically, these new sections are being adopted on an emergency basis under the provisions of Texas Education Code §56.079, added by Senate Bill 1050, §2 (80th Texas Legislature) which states, "The Texas Higher Education Coordinating Board shall adopt rules relating to the administration of the work-study student mentorship program under §56.079, Education Code, as amended by the Act, as soon as practicable after the effective date of this Act." The new sections describe the Work-Study Student Mentorship Program.

The new sections are adopted, on an emergency basis, under the Texas Education Code, §2001.034, which give the Coordinating Board the authority to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice, and Texas Education Code, §56.079, which authorizes the Coordinating Board to adopt rules concerning the work-study student mentorship program.

§4.191. Purpose.

The purpose of this subchapter is to establish rules for implementation of the Work-Study Student Mentorship Program, separate and distinct from the Texas College Work-Study Program outlined under Chapter 22, Subchapter M of this title (relating to Texas College-Work Study Program).

§4.192. Authority.

Texas Education Code, §56.077 authorizes the Coordinating Board to adopt rules to enforce the requirements, conditions, and limitations of §56.079 concerning the Work-Study Mentorship Program.

§4.193. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Financial need--An indication of a student's inability to meet the full cost of attending a college or university, measured by an income methodology, which considers a student to have financial need if his or her adjusted gross annual income is less than income levels set annually by the Commissioner. If the student is a dependent, the family's adjusted gross family income is considered; if the student is independent, only the student's income (and the income of the student's spouse, if he or she is married) are considered.

(4) Mentor--An eligible student employed to:

(A) help students at participating eligible institutions or to help high school students in participating school districts; or

(B) counsel high school students at GO Centers or similar high school-based recruiting centers designed to improve access to higher education.

(5) Participating Entity--An eligible institution, a school district, or a nonprofit organization that has filed a memorandum of understanding with the Coordinating Board under this subchapter.

(6) Program--The Work-Study Student Mentorship Program.

§4.194. Eligibility and Program Requirements.

(a) Eligible Institution. The following Texas institutions of higher education are eligible to participate in the Program:

(1) any public technical college, public junior or community college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003; or

(2) a private or independent institution of higher education, as defined by Texas Education Code §61.003(15), other than a private or independent institution of higher education offering only professional or graduate degrees.

(b) Eligible Student Mentors. To be eligible for employment in the Program, a student mentor shall:

(1) be a Texas resident determined in accordance with §§21.727 - 21.736 of this title (relating to Determining Residence Status);

(2) be enrolled for at least one-half of a full course load in a program of study;

(3) establish financial need as set forth under this section; and

(4) not receive an athletic scholarship or not be enrolled in a seminary or other program leading to ordination or licensure to preach for a religious sect or to be a member of a religious order; and

(5) receive appropriate training as determined by the Commissioner or Board staff.

(c) Participating Entities. To participate in the Program, an eligible institution and one or more school districts or nonprofit organizations shall file with the Coordinating Board a memorandum of understanding detailing the roles and responsibilities of each participating entity.

(d) Criteria for Participation and Program Requirements. Additional criteria for participation and program requirements shall be determined in consultation with participating entities and set forth in Commissioner's policies. The Commissioner's policies shall be reviewed periodically to determine the effectiveness and success of the Program.

§4.195. Allocations and Disbursement of Funds.

(a) Allocations. The Board shall allocate Program funds to participating institutions according to criteria established by the Commissioner. At the beginning of each academic year, the year's full allocation will be provided to each participating institution.

(b) Reallocations. Institutions shall have until a date specified by the Commissioner to encumber all funds allocated. On that date, institutions lose claim to unencumbered funds and the unencumbered funds are available to the Commissioner for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(c) Program funds may be used during any academic period for which mentorship opportunities are needed by participating entities as long as student mentors meet eligibility requirements as outlined under §4.194(b) of this title (relating to Eligibility and Program Requirements).

§4.196. Reporting.

(a) Not later than November 1 of each year, each institution participating in the Program shall report to the Coordinating Board on the progress made by students being assisted through the Program. The report shall include:

(1) the number of students employed as mentors in the preceding year;

(2) the number of students from the participating institution receiving mentoring in the preceding year;

(3) the number of high school students receiving mentoring or counseling from students of the participating institution in the preceding year;

(4) information relating to the costs of the program; and

(5) the academic progress made by student mentors, students of the participating institution receiving mentoring, and high school students receiving mentoring or counseling from students of the participating institution in the preceding year.

(b) The Coordinating Board shall establish reporting requirements and forms to be completed by participating institutions in the Program.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702788
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective Date: June 29, 2007
Expiration Date: October 26, 2007
For further information, please call: (512) 427-6114

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.5

The Texas Higher Education Coordinating Board adopts, on an emergency basis, amendments to §5.5, concerning the uniform admission policy.

The amendments are being adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. Specifically these amendments are being adopted on an emergency basis under the provisions of Texas Education Code §51.807 enacted as part of House Bill 3826. The amendment is required to permit institutions of higher education that may be uncertain how to apply House Bill 3826, enacted by the 80th Legislature, a two-year period in which they may continue to admit students who have not taken the recommended high school program.

The amendments are adopted, on an emergency basis, under the Texas Government Code, §2001.034, which gives the Coordinating Board the authority to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice, and Texas Education Code §51.807 which authorizes the Coordinating Board to adopt rules concerning the uniform admission policy.

§5.5. Uniform Admission Policy.

(a) - (f) (No change.)

(g) In exercising its discretion in accordance with Texas Education Code, §51.804, whether to adopt an admissions policy for each academic year for first-time freshman students, the governing board of each general academic teaching institution may elect to admit students who do not meet the requirements of Texas Education Code, §51.803, but who qualify for admission under one or more of the factors listed in Texas Education Code, §51.805(b). However, the total number of such students who are admitted in an academic year may not exceed 20% of the total number of first-time freshman students admitted by the institution for that academic year. This subsection expires August 31, 2009.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702776

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective Date: June 29, 2007
Expiration Date: October 26, 2007
For further information, please call: (512) 427-6114

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 70. COST OF COPIES OF PUBLIC INFORMATION

1 TAC §70.12

The Office of the Attorney General (the "OAG") proposes new rule 1 TAC §70.12, relating to a governmental body's charges for locating, compiling, and producing public information under Chapter 552 of the Texas Government Code (The Public Information Act). The primary purpose of the proposed rule is to implement House Bill ("HB") 2564, enacted by the 80th Legislature, Regular Session (2007), which amended Chapter 552 by allowing a governmental body to require the payment of a charge before complying with certain requests for public information. Specifically, HB 2564 allows a governmental body to require a requestor to cover some of the governmental body's costs associated with locating, compiling, and producing public information if the amount of time the governmental body has spent on requests by that requestor in a 12-month period is equal to or exceeds a time limit established by the governmental body.

Section 70.12 (Allowable Charges Under Section 552.275 of the Texas Government Code). Proposed §70.12(a) establishes that the amount of a charge allowable under Section 552.275 shall be calculated using existing §70.3(c) - (e). Proposed §70.12(b) prohibits a governmental body from including time spent on certain tasks when determining a charge under Section 552.275.

Mr. Greg Simpson, Division Chief of the Open Records Division of the OAG, has determined that for the first five year period in which the proposed rule is in effect, the fiscal impact on state or local government entities will be positive.

While the fiscal impact on public information requestors cannot be fully assessed for the first five-year period in which the proposed rule is in effect, Mr. Simpson anticipates that any adverse effects on small businesses or economic costs to persons in connection with this rule will be negligible.

Mr. Simpson also has determined that for the first five-year period in which the proposed rule is in effect, the anticipated public benefit is greater governmental efficiency and uniformity when complying with public information requests.

Comments on the proposed rule may be submitted, in writing, no later than thirty (30) days from the date of this publication to Ms. Hadassah Schloss, Cost Rules Administrator, Open Records Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548 or by e-mail to Hadassah.Schloss@oag.state.tx.us. All requests for a public hearing on the proposed rule, submitted under the Administrative Procedure Act, must be received by the OAG no more than fifteen (15) days after the notice of proposed changes in the sections that have been published in the *Texas Register.*

The proposed rule is made pursuant to the authority granted to the OAG under Texas Government Code §552.262 and §552.275.

The proposed rule affects Chapter 552 of the Texas Government Code.

§70.12. Allowable Charges Under Section 552.275 of the Texas Government Code

(a) A governmental body shall utilize the methods established in 1 TAC §70.3(c) - (e) when calculating allowable charges under Section 552.275 of the Texas Government Code.

(b) When calculating the amount of time spent complying with an individual's public information request(s) pursuant to Section 552.275 of the Texas Government Code, a governmental body may not include time spent on:

(1) Determining the meaning and/or scope of the request(s);

(2) Requesting a clarification from the requestor;

(3) Comparing records gathered from different sources;

(4) Determining which exceptions to disclosure under Chapter 552 of the Texas Government Code, if any, may apply to information that is responsive to the request(s);

(5) Preparing the information and/or correspondence required under Sections 552.301, 552.303, and 552.305 of the Government Code;

(6) Reordering, reorganizing, or in any other way bringing information into compliance with well established and generally accepted information management practices; or

(7) Providing instruction to, or learning by, employees or agents of the governmental body of new practices, rules, and/or procedures, including the management of electronic records.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702748

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: August 12, 2007
For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER O. HOME-DELIVERED MEAL GRANT PROGRAM

4 TAC §§1.950 - 1.962

The Texas Department of Agriculture (Department) proposes new Chapter 1, Subchapter O, §§1.950 - 1.962, concerning the Department's new home-delivered meal grant program. This new program was established by the enactment of House Bill 407 by the 80th Legislature, Regular Session, 2007. House Bill 407 provides that the Department shall establish a home-delivered meal grant program to benefit homebound elderly and disabled persons in the state of Texas. New §1.950 provides a statement of purpose of the program. New §1.951 provides definitions to be used in the new subchapter. New §1.952 provides how the program will be administered. New §1.953 provides county requirements. New §1.954 provides eligibility requirements for receiving a grant under the program. New §1.955 provides the process and information required for application. New §1.956 provides nutritional standards for meals served under the program. New §1.957 provides that a grantee must comply with federal, state and local laws and regulations. New §1.958 provides requirements for service of meals under the program. New §1.959 provides requirement for documentation of eligibility of persons served by the program. New §1.960 provides permissible use of grant funds. New §1.961 provides recordkeeping and records retention requirements for grantees. New §1.962 provides requirements for access to grantee records by the Department, and other authorized governmental entities.

Brian Murray, assistant commissioner for external relations, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as result of enforcing or administering the new sections.

Mr. Murray also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be the establishment of a grant program that will allow entities providing home-delivered meals to the homebound elderly and disabled to supplement and extend their services. For the first five-year period the new sections are in effect, there will be no costs anticipated to microbusinesses or small businesses. There may be a minimal cost for nonprofit entities that choose to apply for a grant under the program to meet eligibility requirements regarding nutrition standards and recordkeeping. The cost will depend on the existing administrative capabilities of the applicant, which will vary greatly from county to county, and is not determinable at this time.

Comments on the proposal may be submitted to Brian Murray, Assistant Commissioner for External Relations at the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

New §§1.950 - 1.962 are proposed under House Bill 407, 80th Legislature, Regular Session, 2007, enacting new §12.042 of the Texas Agriculture Code, which provides that the Department shall establish a home-delivered meal grant program to benefit homebound elderly and disabled persons in the state of Texas; and the Texas Agriculture Code §12.016, which provides the department with the authority to adopt rules for administration of its duties under the code.

The Texas Agriculture Code, Chapter 12, is affected by the proposal.

§1.950. Purpose.
This subchapter establishes the requirements for eligible organizations to apply for and obtain grant funds to supplement and extend existing services related directly to delivery of meals to Homebound Elderly persons and Homebound persons with a Disability, through the Home-Delivered Meal Grant Program; and establishes the requirements for related nutritional standards, recordkeeping and documentation related to the Program.

§1.951. Definitions.
The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Approved Organization--An organization that submitted an application under this subchapter that was subsequently approved by the Department.

(2) Department--The Texas Department of Agriculture.

(3) Dietary Consultant--A registered dietitian who is licensed by the Texas State Board of Examiners of Dietitians; or a person with a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management, who is currently employed as a dietician or dietary consultant in a hospital, nursing facility or school.

(4) Disability--A physical, mental or developmental impairment, temporarily or permanently limiting an individual's capacity to adequately perform one or more essential activities of daily living, which include, but are not limited to, personal and health care, moving around, communicating, and housekeeping.

(5) Elderly--An individual who is 60 years of age or older.

(6) Fully Funded--A meal for which home-delivered meal organizations negotiate and sign a contract with the Department of Aging and Disability Services or an area agency on aging, and receive funds, whatever the amount may be, in accordance with applicable state and federal laws and regulations.

(7) Grantee--An organization that has received grant funds under this subchapter.

(8) Home-delivered meal--Individual sized portions of prepared foods that, in the aggregate, provide not less than 1/3 of the Recommended Dietary Allowance (RDA) of nutrition for an adult.

(9) Homebound--A person who is unable to leave his or her residence without aid or assistance or whose ability to travel from his or her residence is substantially impaired.

(10) Organization--A qualifying governmental agency or nonprofit private organization that is exempt from taxation under

§501(a), Internal Revenue Code of 1986, as an organization described by §501(c)(3) of that code, which is a direct provider of home-delivered meals to homebound elderly persons or persons with disabilities in this state.

(11) Program--The Home-Delivered Meal Grant Program.

(12) State Fiscal Year--The period between September 1st of any year and August 31st of the subsequent year.

§1.952. Administration of the Program.

(a) The Department annually shall determine:

(1) the total amount of money available for grants under this subchapter;

(2) the number of residents at least 60 years of age in this state, according to the most recent federal decennial census; and

(3) the number of residents at least 60 years of age in each county in this state, according to the most recent federal decennial census.

(b) Subject to §1.953 of this title (relating to County Grant Required) and subsection (d) of this section, the Department shall make grants in an amount equal to one dollar for each meal that each Approved Organization delivered to Homebound Elderly persons or persons with a Disability in the county in the preceding State Fiscal Year that was not Fully Funded.

(c) The Department shall make a grant not later than February 1 of each calendar year to each Approved Organization.

(d) Except as provided by §1.953 of this title, and subsections (b) and (f) of this section, grants from the Department to Approved Organizations in a county in a State Fiscal Year may not exceed an amount determined by the following formula: CR x (TD/SR), where "CR" is the number of residents at least 60 years of age in the county; "TD" is the total amount of money appropriated to the Department for that State Fiscal Year to make grants, less the Department's administrative expenses; and "SR" is the number of residents at least 60 years of age in this state.

(e) If more than one "Approved Organization" delivers meals in a county, the Department shall reduce the grants proportionally to each qualifying organization in that county so that the total amount of the grants to the organizations does not exceed the amount described by subsection (d) of this section.

(f) If the total amount of the grants made statewide by the Department under subsection (b) of this section is less than the amount appropriated to fund the program under this section in a State Fiscal Year, the Department shall use the unspent funds to proportionally increase the grants to each Approved Organization.

(g) The Department may use up to five percent of the appropriated funds for administration of the program.

§1.953. County Grant Required.

(a) Before an Organization may receive a grant from the Department, the county in which the Organization provides meals must make a grant to the Organization. The grant must be for the provision of home-delivered meals to the homebound elderly and disabled in that county.

(b) A county may make a grant to more than one Organization in the county.

(c) If the county makes a grant to the Organization in an amount that is less than 25 cents for each person at least 60 years of age who resides in the county, according to the most recent federal decennial census, the maximum amount the Department may provide to Organizations in the county is reduced to an amount in proportion to the amount by which the county grant is less than 25 cents for each elderly resident.

§1.954. Eligibility For Grant.

An Organization is eligible to receive a grant under this subchapter if it:

(1) currently administers a home-delivered meal program to Elderly persons and/or persons with a Disability;

(2) (if a nonprofit private organization) has a volunteer board of directors;

(3) practices nondiscrimination;

(4) has an accounting system or fiscal agent approved by the county where it provides meals;

(5) has a system to prevent the duplication of services to clients;

(6) has received a grant from the county in which the Organization is delivering meals, in accordance with Section 1.953 of this title (relating to County Grant Required);

(7) has submitted an application in accordance with §1.955 of this title (relating to Application); and

(8) agrees to use funds received under this subchapter only to supplement or extend existing home-delivered meal services.

§1.955. Application.

(a) The application shall be in a form prescribed by the Department, in accordance with this subchapter.

(b) The application submitted to the Department in accordance with §1.954 of this title (relating to Eligibility), shall:

(1) be notarized and signed by the Organization's executive director and board chair, if applicable;

(2) be postmarked not later than November 1;

(3) include the following information:

(A) the Organization's name and address;

(B) the names and titles of the Organization's executive director and board chair, if applicable;

(C) the name of the county in relation to which the Organization is applying;

(D) the number of residents at least 60 years of age who reside in that county, according to the most recent federal decennial census;

(E) the amount of the grant awarded by that county, as required by §1.954 of this title;

(F) the number of meals the Organization delivered to Elderly persons or persons with a Disability in that county during the preceding State Fiscal Year that were not Fully Funded;

(G) the Organization's most recent financial statement or audited financial report;

(H) a list of the Organization's board and officers;

(I) appropriate documentation demonstrating that the Organization:

(i) is a qualifying governmental agency or nonprofit private organization;

(ii) has been awarded a grant by the county for the provision of home-delivered meals to the homebound elderly and disabled in that county; and

(iii) has delivered the number of meals reported under subsection (a)(3)(F) of this section; and

(J) any other information the Department determines necessary.

(c) An Organization that applies for a grant for meals delivered in more than one county must submit a separate application for each county in which the Organization delivers meals.

§1.956. Nutritional Standards.

Each Home-delivered meal to which grant funds are applied shall be approved by a Dietary Consultant as meeting 1/3 of the recommended dietary allowance (RDA) for adults and the Dietary Guidelines for Americans, and shall adhere to federal meal pattern requirements. The approval must occur and be documented prior to the date the meal is served.

§1.957. Compliance with Laws and Regulations.

A Grantee must follow procedures and maintain facilities that comply with all applicable federal, state and local laws and regulations related to fire, health, sanitation, and safety, and obtain all necessary permits. All food preparation, handling, and service activities shall comply with applicable Texas Department of State Health Services rules.

§1.958. Service Requirements.

Each Grantee using grant funds received under this subchapter toward the preparation or delivery of a Home-delivered meal must provide such meal in accordance with the service requirements outlined in Title 40 Texas Administrative Code, §55.27, or other applicable local, state or federal regulations relating to the delivery, transportation, packaging of home-delivered meals, or the handling of undelivered meals.

§1.959. Eligibility of Persons Served.

Each Grantee using grant funds received under this subchapter toward the preparation or delivery of a Home-delivered meal must document that persons receiving a meal funded under this subchapter are Homebound Elderly persons or Homebound persons with a Disability as defined in §1.951 of this title (relating to Definitions).

§1.960. Permitted Use of Grant Funds.

The expenditure of grant funds by a Grantee shall be documented and used only to supplement and extend existing services related directly to delivery of meals to Homebound Elderly persons and Homebound persons with a Disability. Permissible expenditures include, but are not limited to, food costs and related preparation and packaging expenses, gasoline, and other operational costs, but shall not be used for the purchase of capital assets.

§1.961. Recordkeeping and Record Retention.

(a) Grantees shall maintain documentation as required by the Department to verify that individuals who receive meals paid for or delivered in part with grant funds received under this subchapter each qualify as a Homebound Elderly person or Homebound person with a Disability. Such documentation may be records already maintained by organizations that receive federal or state funding, or other documentation maintained in accordance with Program guidelines as may be established by the Department.

(b) Grantees shall submit reports and documentation as required by the Department to verify that expenditures made are directly related to supplementing and extending existing home-delivered meal services to Homebound Elderly persons and Homebound persons with a Disability, including documentation of the eligibility of persons receiving Home-delivered meals.

(c) Grantee shall retain all financial records, supporting documents, statistical records, and all other records relating to any grant funds received pursuant to this subchapter and expenditures of funds in conformity with federal and state regulations and generally accepted accounting principles.

(d) Records described in this section shall be maintained for the retention period in accordance with the records retention schedule established by the Department and approved by the Texas State Library and Archive Commission.

(e) All of the records described in subsections (a) and (b) of this section shall be maintained indefinitely if audit findings or other disputes or litigation have not been resolved. Grantees with multiple locations may maintain all records at a designated central location (i.e., administrative headquarters) for purposes of this section.

§1.962. Access to Grantee Records.

Grantee shall permit the Department and any other authorized governmental entity, through any authorized representatives, the access to and right to examine all records, books, papers, contracts, or other documents, including permits, related to grant funds received pursuant to this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2007.

TRD-200702797
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 463-4075

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CHAPTER 19. QUARANTINES
SUBCHAPTER S. ASIAN CYCAD SCALE QUARANTINE

4 TAC §§19.200 - 19.203

The Texas Department of Agriculture (the department) proposes new §§19.200 - 19.203, concerning a quarantine for the Asian cycad scale, *Aulacaspsis yasumatsui* Takegi. The quarantine is proposed to slow the spread of this pest in the State. The new sections prescribe specific restrictions on the movement of quarantined articles. In Texas, the Asian cycad scales were intercepted in some cycad palms (cycads) imported from Florida during the last two years. These infestations were eliminated either by treating or destroying the infested cycads, the most common hosts of the Asian cycad scale. However, the infestation suddenly increased in late 2006. In September 2006, the Texas Cooperative Extension reported widespread occurrence of the Asian cycad scale in Cameron County, particularly near Harlingen, Texas. Later, the Cooperative Extension reported the presence of this pest from eight additional Texas counties. A majority of cycads offered for sale in Texas are imported from Florida, whereas approximately 20 nurseries produce these cycads locally. In addition, approximately 15 businesses distribute

these plants in Texas. An estimated 12 nurseries that produce cycad plants and eight businesses that distribute these plants are located in the Texas Asian cycad scale infested counties. The Asian cycad scales cause damage by sucking plant fluids. They cause necrosis of leaves and eventually plant death if left uncontrolled. Movement of infested cycads has been identified as the major pathway for the artificial spread of this pest. The department believes that by placing restrictions on the movement of quarantined articles from the infested counties of Texas and other states will delay the spread of this pest into free areas of Texas.

Section 19.200 defines the quarantined pest. Section 19.201 lists the Asian cycad scale-infested counties in Texas and other states. Section 19.202 describes the quarantined articles, and §19.203 prescribes requirements for movement of the quarantined articles from the quarantined area to a free area. The department believes that it is necessary to take this action to reduce spread of the Asian cycad scale into free areas of Texas.

Dr. Shashank Nilakhe, state entomologist, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the new sections.

Dr. Nilakhe has also determined that for each of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be reduction in the spread of the Asian cycad scale due to manmade activities. There will be a treatment cost to small and/or micro businesses and individuals that either produce or move quarantined articles from the quarantined area to free area. In order to comply with the new sections, businesses and individuals that are covered by the quarantine will be required to treat quarantined articles by insecticidal treatments or other means prescribed by the department. The cost of treatment will depend on the volume of quarantined articles moved from infested counties to non-infested counties, the size of the plants moved and the method of treatment prescribed. Consequently, the specific cost to the impacted businesses cannot be determined at this time.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles.

The code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.200. Quarantined Pest.

The quarantined pest is the Asian cycad scale, *Aulacaspsis yasumatsui* Takegi, in any living stage of development.

§19.201. Quarantined areas.

The quarantined areas are:

(1) the states of Florida and Hawaii and the Commonwealth of Puerto Rico;

(2) the Texas counties of Bexar, Cameron, Fort Bend, Harris, Hidalgo, Jefferson, Montgomery, Nueces and Waller; and

(3) any other area infested with the Asian cycad scale.

§19.202. Quarantined Articles.

(a) The quarantined pest is a quarantined article.

(b) Cycad plants belonging to genera *Cycas, Dioon, Encephalartos, Macrozamia, Microcycas* and *Stangeria* are quarantined articles.

§19.203. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the free areas of Texas, except as provided in subsection (b) of the section.

(b) Exceptions. Quarantined articles from quarantined areas of this state or any state are allowed entry into or through the free areas of Texas if:

(1) treated as prescribed by the department; and

(2) accompanied by a phytosanitary certificate issued by an authorized inspector of the state of origin certifying that the article was treated as prescribed and is free of the quarantined pest upon entry into Texas; or

(3) accompanied by a phytosanitary certificate issued by an authorized representative of the department certifying that the article from quarantined areas within this state was treated as prescribed and is free of the quarantined pest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2007.

TRD-200702789
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.310

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.310 (relating to Payment of Prize Payments Upon Death of Prize Winner). The purpose of the proposed amendments is to clarify current agency practices and procedures to be followed if a lottery installment prize winner,

who claimed the prize in an individual capacity, dies before all the unassigned lottery prize installment payments have been paid and to clarify how the remaining unassigned lottery prize installment payments would be made in accordance with the rule.

Existing subsection (a) has been deleted in this proposal.

New subsection (a) sets forth provisions by which the personal representative of the estate of a deceased prize winner may petition the executive director of the Commission to pay the net present value of all remaining lottery prize installment payments, not previously assigned, in a lump sum payment.

New subsection (a)(1) relates to the valuation process of securities and/or cash held for a deceased prize winner.

New subsection (a)(2) states that the determination of valuation of securities, net present value of unassigned remaining installment payments shall be at the sole discretion of the Executive Director of the Commission.

New subsection (a)(3) relates to the distribution of the net present value amounts of the future lottery prize payments to the estate by payment into the registry of the proper Probate Court upon the Executive Director's confirmation of compliance with subsection (b).

Subsection (b) has been amended throughout to make uniform the term, "unassigned lottery prize", deletes the language, "as part of the appropriate judicial order", and adds the language, "of the Probate Court to include, at a minimum" and adds the language, "language and findings:"

Subsection (b)(2) has been amended to include new language regarding investigation, and clarifies that the payment of the remaining lottery prize installment payments is based on the attorney ad litem's investigation and findings.

Subsection (b)(3) has been amended to include the new language "and including any offsets or deductions required by the State Lottery Act"; and the deletion of "of the lesser of the commission's book value or fair market value". The amendments also add the language, "estate", "inheritance", "and including any offsets or deductions required by the State Lottery Act,", and "net present value of the".

Subsection (b)(4) has been amended by deleting, "lump sum" and "of the lesser of the commission's book value or fair market value". The amendments also add "including the representatives" and "or claimants to the estate, whether known or unknown; further, a proposed indemnification and release, approved by the Commission and representatives of the estate, will be submitted for approval by the Probate Court prior to entry of the Probate Court's order and will be fully executed by all representatives and beneficiaries or heirs of the estate prior to distribution of the lump sum payment into the registry of the Probate Court;"

Subsection (b)(5) has been amended by deleting, "and".

Subsection (b)(6) has been amended by deleting, "indicating" and adding the following language, "providing that the Probate Court found by competent evidence", "net present value of the unassigned lottery", "or inheritance", and "; and".

New subsection (b)(7) states, "Based upon the facts and circumstances of the underlying probate matter, the Commission may require additional language or findings to be set forth in the judicial order."

Kathy Pyka, Controller, has determined that for the first five-year period there will be no significant fiscal impact for state or local government as a result of enforcing these amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to individuals who are required to comply with the rule as proposed.

Kimberly L. Kiplin, General Counsel, has determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated is clarification of current agency practices and procedures to be followed if a lottery installment prize winner, who claimed the prize in an individual capacity, dies before all the unassigned prize installment payments have been paid and clarification of how the remaining unassigned lottery prize installment payments would be made in accordance with the rule.

Comments on the proposed amendments may be submitted to Deanne Rienstra, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. Comments must be received within 30 days after publication of the proposed amendments in the Texas Register in order to be considered.

The amendments are proposed under Texas Government Code, §466.015, which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery. The section is also proposed under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this proposal.

§401.310. Payment of Prize Payments Upon Death of Prize Winner.

(a) The personal representative of the estate of a deceased prize winner entitled to payment of lottery prize installment payments pursuant to the State Lottery Act §466.406(b), may petition the executive director to pay the net present value all of the remaining lottery prize installment payments, not previously assigned, in a lump sum payment to the estate. For this rule, "prize winner" means an individual who claimed the prize as an individual and not as a representative of a legal entity and does not include a legal entity. The personal representative of the estate must present with the petition to the executive director an order from the proper Probate Court in compliance with the requirements set out in part (b), below.

(1) The net present value lump sum payment to be distributed shall represent the lesser of the commission's book value or fair market value of that portion of the unassigned future installment payments that are to be paid to the estate, less any applicable taxes or other offsets required by the State Lottery Act, Texas Government Code Chapter 466. The commission's book value is the daily recalculated amortized cost of investments under the interest method. The fair market value is the value of investments at any point in time as determined by the market place.

(2) The valuation of the securities at the lower of the commission's book value or fair market value and the determination of the net present value of the remaining unassigned installment payments shall be at the sole determination and discretion of the executive director.

(3) The securities and/or cash representing the future lottery prize installment payments held for the deceased prize winner, not

previously assigned, shall be distributed to the estate of the deceased prize winner by payment into the registry of the proper Probate Court upon confirmation by the executive director of the Probate Court's order's compliance with part (b) below.

[~~(a) In the event of the death of a prize winner (an individual claimant who has a valid ticket) who is entitled to a prize which is paid in installments, the executive director, upon petition of the estate of the deceased prize winner to the commission, will pay the payment of all the remaining installments to the estate. If the executive director pays the payment of all the remaining installments, then securities and/or cash held for the deceased prize winner, which represents the lesser of the commission's book value (the daily recalculated amortized cost of investments under the interest method) or fair market value (the value of investments at any point in time as determined by the market place) of that portion of the future installment payments that are to be paid, less any applicable taxes and administrative costs incurred by the commission associated with paying the remaining installment payments, shall be distributed to the estate. The valuation of the securities at the lower of the commission's book value or fair market value and determination of the net present value of the remaining installment payments shall be at the sole determination and discretion of the executive director.~~]

(b) The commission shall require an [~~appropriate judicial~~] order from the proper Probate Court, in order to facilitate the payment of the remaining unassigned lottery prize installment payments. The commission shall require[~~, as part of the appropriate judicial order,~~] the order of the Probate Court to include, at a minimum, the following language and findings:

(1) Language approving the form and substance of the order by all representatives of the estate of the deceased prize winner, whether such representatives are executors or administrators and by all beneficiaries and/or heirs known and existing at the time the order is signed by the Probate Judge;

(2) Language indicating that an attorney ad litem was appointed by the court to represent and investigate the interests of any unknown heirs, beneficiaries or claimants to the estate, and a finding by the court, after full consideration of [~~considering~~] the attorney ad litem's report documenting the investigation and findings, that the payment of the remaining unassigned lottery prize installment payments is appropriate based on the attorney ad litem's findings;

(3) Language providing for indemnification and holding the commission harmless by all representatives of the estate of the deceased prize winner from any and all liability of the estate of the deceased prize winner for federal estate and state inheritance [~~estate~~] taxes, or other tax liability, and including any offsets or deductions required by the State Lottery Act, and from any claim known or unknown, existing now or arising in the future, that may be made by a third party as a result of the lump sum payment [~~of the lesser of the commission's book value or fair market value~~] of the net present value of the remaining unassigned lottery prize installment payments;

(4) Language providing that, upon [~~lump sum~~] payment [~~of the lesser of the commission's book value or fair market value~~] of the net present value of the remaining unassigned lottery prizeinstallment payments, the commission has satisfied in full its obligations to the estate of the deceased prize winner, including the representatives, [~~and~~] beneficiaries, [~~or~~] heirs, and any claimants to the estate, and shall be released from any further liability to either the estate of the deceased prize winner or to the beneficiaries, [~~or~~] heirs, or claimants to the estate, whether known or unknown; further, a proposed indemnification and release, approved by the commission and representatives of the estate, will be submitted for approval by the Probate Court prior to entry of the Probate Court's order and will be fully executed by all representatives and beneficiaries or heirs of the estate prior to distribution of the lump sum payment into the registry of the Probate Court;

(5) Language requiring the commission to pay the lump sum payment into the registry of the court within 30 days after the securities are liquidated, such liquidation being required by signed order of the Probate Court. In the event there is a delay of time between the sale of the securities and the payment into the registry of the court, any interest earned during this period of time shall be kept by the State of Texas; [~~and~~]

(6) Language [~~indicating~~] providing that the Probate Court found by competent evidence that the payment of the remaining net present value of the unassigned lottery prize installment payments is necessary to pay the estate or inheritance tax burden imposed on the estate by federal and/or state taxing authorities[~~.~~] ; and

(7) Based upon the facts and circumstances of the underlying probate matter, the commission may require additional language or findings to be set forth in the judicial order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702684
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 344-5113

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CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES
SUBCHAPTER A. ADMINISTRATION

16 TAC §402.100

The Texas Lottery Commission (Commission) proposes for public comment an amendment to 16 TAC §402.100 (relating to Definitions). The purpose of the proposed amendment is to add a definition for "bingo chairperson" in order to clarify the term as used in other proposed rules that are being drafted. The existing definitions are renumbered accordingly.

Kathy Pyka, Controller, has determined that for each year of the first five-years the proposed amendment will be in effect, there will be no fiscal impact for state or local government as a result of this amendment. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no adverse effect on individuals required to comply with the rule.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years that the proposed amendment is in effect, licensees will benefit because the new definition provides clarification and guidance relating to identifying an individual who will be the contact person for any bingo related activities between the organization and the Commission.

The Commission requests comments on the proposed rule from any interested person. Comments on the proposed rule may be

submitted to Sandra Joseph, Assistant General Counsel, by mail at P.O. Box 16630, Austin, Texas 78711; by facsimile at (512) 344-5189; or by email at www.txlottery.org. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Monday, July 16, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed rule in order to be considered.

The amendment is proposed pursuant to Occupations Code §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

The proposed amendment implements Occupations Code, Chapter 2001.

§402.100. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bingo chairperson--An officer of a licensed authorized organization who is designated in writing by the organization as responsible for overseeing the organization's bingo activities and reporting to the membership relating to those activities.

(2) [~~(1)~~] Bingo premises--The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo.

(3) [~~(2)~~] Break-open bingo ticket--An instant bingo card commonly known as an instant bingo ticket, pull-tab bingo game or instant bingo card as defined by §402.300 of this chapter.

(4) [~~(3)~~] Calendar week--A period of seven consecutive days commencing with Sunday and ending with Saturday.

(5) [~~(4)~~] Calendar year--A period of 12 consecutive months commencing with January 1 and ending with December 31.

(6) [~~(5)~~] Card-minding device--Any mechanical, electronic, electromechanical or computerized device, and including related hardware and software, that is interfaced with or connected to equipment used to conduct a game of bingo and which allows a player to store, display, and mark a bingo card face five spaces wide by five spaces long, the center space free, and the other spaces containing pre-printed numbers between 1 and 75, inclusive. A card-minding device shall not be a video lottery machine as defined by H.B. 3021, §10, 74th Leg. R.S., 1995.

(7) [~~(6)~~] Commission--The Texas Lottery Commission, the agency created by H.B. 54, 72nd Leg., 1st C.S. (1991), as amended by H.B. 1587 and H.B. 1013, 73rd Leg. R.S., 1993.

(8) [~~(7)~~] Conductor--A licensed authorized organization.

(9) [~~(8)~~] Director--The Director of the Charitable Bingo Operations Division, commonly known as the bingo division, of the Commission.

(10) [~~(9)~~] Executive Director--The Executive Director of the Commission.

(11) [~~(10)~~] Instant bingo card--An instant bingo ticket, pull-tab bingo game, break-open bingo ticket or instant bingo card as defined by §402.300 of this chapter.

(12) [~~(11)~~] Instant bingo ticket--An instant bingo card commonly known as a break-open bingo ticket, a pull-tab bingo game or an instant bingo card as defined by §402.300 of this chapter.

(13) [~~(12)~~] Location--The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo.

(14) [~~(13)~~] Operator--A natural person designated pursuant to authority of the Bingo Enabling Act.

(15) [~~(14)~~] Place--The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo.

(16) [~~(15)~~] Primary business office--The physical location at which all records relating to the primary purpose(s) of a licensed authorized organization are maintained in the ordinary course of business.

(17) [~~(16)~~] Pull-tab bingo game--An instant bingo card commonly known as a break-open bingo ticket, an instant bingo ticket or an instant bingo card as defined by §402.300 of this chapter.

(18) [~~(17)~~] 24-hour period--A period of 24 consecutive hours commencing at 12:00 midnight.

(19) [~~(18)~~] Working day--Other than a Saturday, Sunday or holiday authorized by law, a period of nine consecutive hours commencing at 8:00 a.m. and ending at 5:00 p.m.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702682
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 344-5113

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16 TAC §402.102

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Lottery Commission (Commission) proposes the repeal of Title 16, Part 9, Chapter 402, Subchapter A, §402.102 (relating to Bingo Advisory Committee). By separate action, the Commission will publish proposed new Title 16, Part 9, Chapter 402, Subchapter A, §402.102 (relating to Bingo Advisory Committee). The Commission is proposing the repeal of the current rule and the adoption of a new rule, rather than an amendment of the current rule, because the format of the rule is being changed significantly. The proposed new rule is written in a question and answer format.

Kathy Pyka, Controller, has determined that for each year of the first five-year period there will be no significant fiscal impact for state or local government as a result of this repeal. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to individuals who are required to comply with the repeal as proposed.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five-year period the repeal of the existing Bingo Advisory Committee rule and subsequent proposed new Bingo Advisory Committee rule will be in effect, the public benefit anticipated is a more reader friendly rule for interested parties to obtain answers to their questions about the Bingo Advisory Committee.

The Commission requests comments on the proposed repeal from any interested person. Comments may be submitted to Sandra Joseph, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. The Commission will hold a public hearing on this proposal at 10:00 a.m. on July 16, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed repeal in order to be considered.

The repeal is proposed under Occupations Code §2001.054, which authorizes the Commission to adopt rules to administer the Bingo Enabling Act.

The proposed repeal implements Occupations Code, Chapter 2001.

§402.102. Bingo Advisory Committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702680
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 344-5113

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16 TAC §402.102

The Texas Lottery Commission (Commission) proposes new Title 16, Part 9, Chapter 402, Subchapter A, §402.102 (relating to Bingo Advisory Committee). By separate action, the Commission will publish the proposed repeal of the current Title 16, Part 9, Chapter 402, Subchapter A, §402.102 (relating to Bingo Advisory Committee). The Commission is proposing the new rule concurrently with proposing the repeal of the old rule, rather than amending the existing rule, because of significant format changes. The proposed rule provides information on the composition and duties of the Bingo Advisory Committee.

Kathy Pyka, Controller, has determined that for each year of the first five-years that the rule will be in effect there will be no significant fiscal impact for state or local government as a result of this new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to individuals who are required to comply with the rule as proposed.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five-years that the new rule will be in effect, the public benefit anticipated is a more understandable version of the rule for interested parties to obtain answers to their questions about the Bingo Advisory Committee. The new rule also contains new language regarding how Bingo Advisory Committee members are selected.

The Commission requests comments on the proposed rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. The Commission will hold a public hearing on this proposal at 10:00 a.m. on July 16, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed new rule in order to be considered.

The new rule is proposed under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act and under Occupations Code §2001.057, which provides that the Commission may adopt rules to govern the operations of the Bingo Advisory Committee.

The new rule implements Occupations Code, Chapter 2001.

§402.102. Bingo Advisory Committee (BAC).

(a) What is the purpose of the Bingo Advisory Committee (BAC)?

(1) The purpose of the BAC is to:

(A) advise the Commission on the needs and concerns of the State's bingo industry;

(B) report the activities of the BAC to the Commission; and

(C) perform other duties as directed by the Commission.

(2) The BAC's sole duty is to advise the Commission.

(3) The BAC has no executive or administrative powers or duties with respect to the operations of the Charitable Bingo Operations Division.

(b) What is the composition of the Bingo Advisory Committee?

(1) The Commission may appoint nine persons as members of the BAC.

(2) The Commission must appoint members to represent the following interest groups:

(A) the public,

(B) conductors that are not licensed commercial lessors,

(C) conductors that are licensed commercial lessors,

(D) commercial lessors, and

(E) system service providers.

(3) The Commission may appoint members to represent:

(A) licensed manufacturers, and

(B) licensed distributors.

(4) If there is not an individual to represent one of the required interest groups, the Commission may appoint a member from the remaining interest groups.

(c) What are the minimum eligibility requirements to serve on the BAC?

(1) A member may not represent a licensee that is delinquent in payment of any prize fees or gross rental taxes for which a final jeopardy determination has been made by the Commission.

(2) A member may not represent a licensee that has a license denied, revoked or suspended by the Commission.

(3) A member representing the public may not be an individual who is required by statute to be listed on a conductor, commercial lessor, manufacturer, or distributor license application.

(4) A member must meet the criminal history standards in Bingo Enabling Act Sections 2001.105(b), 2001.154(a)(5), 2001.202(1), 2001.207(1), and 2001.252(1).

(5) A nominee for membership must provide complete and accurate information on the nomination form.

(d) How are members nominated to serve on the BAC?

(1) Individuals may submit a nomination form during the nomination period which begins on March 1 and ends on April 30 each year.

(2) Nomination forms are available from the Charitable Bingo Operations Division or the Commission's web site.

(e) What is the appointment process?

(1) Charitable Bingo Operations Division staff verify eligibility of nominees and send all nominations that meet minimum requirements to each Commissioner.

(2) Charitable Bingo Operations Division staff rank the nominations with advice and consultation of the Executive Director as appropriate.

(3) Charitable Bingo Operations Division staff provide to the BAC at the first meeting after June 1 each year the names of those nominees that staff will recommend to the Commissioners.

(4) The BAC may be a resource to the Commission by reviewing nominations, interviewing prospective members, and submitting its recommendations to the Charitable Bingo Operations Division and the Commissioners for consideration. However, the BAC will not act to exclude nominees.

(5) Each Commissioner may interview those nominees recommended by staff or other nominees.

(6) The Commissioners may appoint a nominee based on staff or BAC recommendation or may appoint any other nominee.

(f) How long may members serve on the BAC?

(1) The Commission appoints each member to serve for a three-year term or until the Commission appoints a successor.

(2) Members serve staggered terms of three years so that three members' terms expire August 31 each year.

(3) Each member serves at the pleasure of the Commission.

(g) May a BAC member be removed from the BAC before the member's term has expired?

(1) The Commission may remove a member at any time for failure to meet the eligibility requirements described in subsection (c).

(2) The Commission may remove a member for failure to attend two consecutive, regular scheduled meetings for any reason.

(h) When and where does the BAC meet?

(1) The BAC must meet quarterly but may meet more frequently at the Commission's request.

(2) Quarterly BAC meetings must be held at the Commission headquarters in Austin, Texas, except one quarterly meeting per year may be held at a location in Texas other than Austin, subject to the discretion of the Charitable Bingo Operations Division Director.

(i) Who conducts the BAC meeting?

(1) The BAC must annually select a presiding officer to conduct meetings and general business.

(2) The presiding officer must designate a member of the BAC to conduct meetings and general business in the presiding officer's absence.

(j) Are BAC meetings open to the public? BAC meetings shall be open meetings in accordance with the Texas Public Information Act, Texas Government Code, Chapter 551.

(k) May a member send a substitute person or proxy vote to a BAC Meeting? A member may not send a substitute person or proxy vote to a meeting.

(l) Are minutes kept of BAC meetings?

(1) The BAC must keep minutes of each meeting reflecting all formal action taken.

(2) The BAC may consider a transcript prepared by a court reporter to be the minutes of the meeting.

(3) The BAC must approve the minutes at its next meeting, and file the approved minutes with the Charitable Bingo Operations Division Director.

(m) What is the BAC's annual workplan?

(1) The BAC must submit to the Commission for approval at the first meeting after September 1 each year a workplan to guide the activities of the BAC for the following year.

(2) The workplan will contain those items that the BAC and the Commission determine are relevant to the state of the bingo industry.

(n) What are the BAC's reporting requirements?

(1) The BAC must report their activities quarterly to the Commission, although the Commission may require reporting more frequently.

(2) The BAC will report annually to the Commission the BAC's perspective on the state of the charitable bingo industry in Texas with specific comments on the following:

(A) gross receipts;

(B) net receipts;

(C) charitable distributions;

(D) expenses;

(E) attendance; and

(F) any other matter requested by the Commission.

(3) At the first Commission meeting held after September 1 each year, the BAC will provide to the Commission a report of its activities as they relate to the workplan approved by the Commission the previous year.

(o) When does the BAC cease to exist? The BAC will cease to exist annually on August 31, unless the Commission, prior to August 31, votes to continue the BAC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702683

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3, §391.4

The Polygraph Examiners Board proposes amendments to §391.3, concerning Internship Training Schedule and §391.4, concerning State Examinations for Polygraph Examiners License.

Section 391.3(10) is amended to better clarify the rule.

Section 391.4(1) is amended to allow for a change in testing procedures.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five year period the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing the amendments as proposed.

Mr. DiTucci also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be better than present practices. There will be no effect on small or micro businesses. There will be minimal or no effect to individuals required to comply with the rules as proposed.

Comments on the amendments may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001. Comments must be submitted prior to August 8, 2007.

The amendments are proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the amendments.

§391.3. Internship Training Schedule.

The following internship schedule has been approved and adopted by the Board as a minimum type and number of hours of any internship training program to be utilized in course of supervised instruction:

(1) - (9) (No change.)

(10) Supervised testing and interviewing--minimum of 30 tests conducted in Texas.

(11) - (17) (No change.)

§391.4. State Examinations for Polygraph Examiners License.

State examinations for polygraph examiner license shall conform with the following.

(1) When an intern becomes eligible, as provided by law, the intern may take the state examination for a polygraph examiners license under the direct supervision of the Board. The [~~intern can take the academic and scenario portions of the licensing examination under the Executive Officer's supervision any time after successful graduation from a Board approved polygraph school. The oral board portion of the~~] licensing examination can only be taken after the intern has completed five (5) full months of internship under a sponsoring, licensed examiner. At least Thirty (30) days before the [~~Oral Board~~] Licensing Examination an intern must have submitted all required documents to the Board Office and must have completed 30 polygraph examinations; otherwise, the intern will not be able to take [~~Oral Board portion of~~] the licensing examination until the next scheduled Board Meeting.

(2) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2007.

TRD-200702799
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 424-2058

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CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

The Polygraph Examiners Board proposes the repeal and replacement of §391.5, concerning Supervision and Internship Review.

Section 391.5 is repealed and replaced because the new rule would better serve the public.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five year period the repeal and replacement is in effect there will be no fiscal implications to state or local government as a result of enforcing the rules as proposed.

Mr. DiTucci also has determined that for each year of the first five years the repeal and replacement is in effect the public benefit anticipated as a result of enforcing the rules will be better than present practices. There will be no effect on small or micro businesses. There will be minimal or no effect to individuals required to comply with the rules as proposed.

Comments on the proposal may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001. Comments must be submitted prior to August 8, 2007.

22 TAC §391.5

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Polygraph Examiners Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules

relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the repeal.

§391.5. Supervision and Internship Review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2007.

TRD-200702800
Frank DiTucci
Executive Director
Polygraph Examiners Board
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 424-2058

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22 TAC §391.5

The new section is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the new rule.

§391.5. Supervision and Internship Review.

(a) The intern sponsor, or a licensed examiner meeting the requirements to be a sponsor is required to be present to supervise while an intern is conducting a polygraph examination or/is required to be available to monitor the intern by audio, at a minimum, while the intern is conducting a polygraph examination without the sponsor, or examiner meeting the requirements to be sponsor, being present to supervise.

(b) The sponsor, or other examiner meeting the requirements to be a sponsor, must be available for real-time communication with the intern (i.e. phone, e-mail, or text-message) at the time the exam is being conducted.

(c) If the intern's polygraph examination is monitored as prescribed by subsection (a) of this section, the sponsor, or licensed examiner meeting the requirements to be a sponsor, shall carefully review each polygraph examination the intern conducts before the intern renders an opinion, either oral or written.

(d) If the intern's polygraph examination is monitored under subsection (b) of this section, the intern is required to transmit the polygraph charts electronically (i.e. fax, e-mail) to the sponsor or examiner meeting the requirements to be a sponsor, who shall in turn carefully review the transmitted chart data before the intern renders an opinion either oral or written.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2007.

TRD-200702801
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 424-2058

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22 TAC §391.8

The Polygraph Examiners Board proposes an amendment to §391.8, concerning Applicant With Out-of-State License.

Section 391.8 is amended to allow a change in testing procedures.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the amendment as proposed.

Mr. DiTucci also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be better protection for the public. There will be no effect on small or micro businesses. There are no anticipated economic costs to individuals required to comply with the rule as proposed.

Comments on the amendment may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001. Comments must be submitted prior to August 8, 2007.

The amendment is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the amendment.

§391.8. Applicant With Out-of-State License.

(a) The Board will require the holder of an out-of-state polygraph license to meet the following requirements:

(1) must be a licensed examiner in good standing (i.e. out-of-state license is not suspended or revoked) at the time of applying for Texas Polygraph license;

(2) must be a licensed polygraph examiner in that state for a minimum of two (2) years;

(3) must have administered fifty (50) polygraph examinations before applying for a Texas license;

(4) must pass Texas licensing exam [~~over Texas Occupations Code, Chapter 1703 (Polygraph Examiners), and over current Board rules and regulations~~];

(5) comply with all existing requirements in Texas Occupations Code, §1703.206 (non-resident Applicant for License).

(b) This rule replaces the need for reciprocity agreements with other states.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2007.

TRD-200702802

Frank DiTucci
Executive Officer
Polygraph Examiners Board
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 424-2058

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CHAPTER 393. GENERAL

22 TAC §393.9

The Polygraph Examiners Board proposes new §393.9, concerning Bonds and Insurance.

New §393.9 was proposed to better identify those parties authorized to offer for sale bonds or insurance policies in the state of Texas.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five year period the new section is in effect there will be no fiscal implications to state or local government as a result of enforcing the new section as proposed.

Mr. DiTucci also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the rule will be better than present practices. There will be no effect on small or micro businesses. There are no anticipated economic costs to individuals required to comply with the rule as proposed.

Comments on the new section may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001. Comments must be submitted prior to August 8, 2007.

The new rule is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the new rule.

§393.9. Bonds and Insurance.

Bonds or Insurance can be written only by those authorized to do so in the State of Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2007.

TRD-200702803
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 424-2058

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CHAPTER 395. CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS

The Polygraph Examiners Board proposes the repeal and replacement of §395.14, concerning No Texas Address; new §395.15, concerning Authority to Work in the United States and an amendment to §395.16, concerning Unauthorized Examination.

The repeal and replacement of §395.14 is proposed to better clarify the process of registering a persons license.

New §395.15 this is proposed to better identify person legally entitled to work in Texas.

Section 395.16 is proposed to better identify the examiner.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing the rules as proposed.

Mr. DiTucci also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be better than present practices. There will be no effect on small or micro businesses. There are no anticipated economic costs to individuals required to comply with the rules as proposed.

Comments on the proposals may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001. Comments must be submitted prior to August 8, 2007.

22 TAC §395.14

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Polygraph Examiners Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the repeal.

§395.14. No Texas Address.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2007.

TRD-200702804
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 424-2058

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22 TAC §§395.14 - 395.16

The amendment and new sections are proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the proposals.

§395.14. No Texas Address.

A Texas license holder, who is a U.S. citizen or otherwise legally allowed to work in the U.S., but has no Texas address, shall be required to register his or her Texas license with the Travis County, Texas county clerk.

§395.15. Authority to Work in the United States.

Along with all other requirements a person who is not a U.S. citizen must provide documentation to be able to be and work in the United States.

§395.16. Unauthorized Examination.

An examiner shall not conduct an examination where the examiner [~~he~~] has reason to believe the examination is intended to circumvent or defy the law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2007.

TRD-200702805
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 424-2058

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.72

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §573.72 concerning Animal Reproduction. The Board, through its rules and policies, interprets many activities to constitute the "practice of veterinary medicine" as the phrase is generally defined in the Veterinary Licensing Act, Occupations Code, §801.002. Section 573.72 currently interprets the practice of veterinary medicine as it applies to animal reproduction, especially the practice of embryo transplantation. The Board is aware that in certain circumstances "breeding soundness examinations" or elements of such examinations may have been done by non-veterinarians. The Board, through the amendments, seeks to clarify that the assessment of an animal's potential for reproduction involves many traditional activities of veterinary medicine, including palpation, examination of blood and semen samples, ultrasonography, and related activities. When breeding soundness is a condition of a sale of an animal, only a veterinarian may issue a certificate of veterinary inspection attesting to the physical condition and/or soundness of an animal. Thus, a breeding soundness examination should be considered within the scope and function of veterinary medicine and must be conducted only by a veterinarian.

Mr. Dewey Helmcamp III, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the section.

Mr. Helmcamp has also determined for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to increase compliance with the Veterinary Licensing Act and reduce the incidents of unauthorized practice that could jeopardize the health and well-being of animals. There will be no effect on small or micro businesses. There will be no economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 306-7555, fax (512) 305-7556, e-mail loris.jones@tbvme.state.tx.us, and will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Occupations Code, §801.002.

§573.72. Animal Reproduction.

(a) The Board considers the following activities the practice of veterinary medicine as defined in the Veterinary Licensing Act, Occupations Code, §801.002 [~~Pursuant to the Act, section 2(2) and §(11), any of the following activities constitute the practice of veterinary medicine~~]:

(1) surgical invasion of the reproductive tract of an animal, including laparoscopy and needle entry unless performed under the direct supervision of a veterinarian; [~~or~~]

(2) obtaining, possessing or administering prescription or legend drugs for use in an animal without a valid prescription from a licensed veterinarian or in a properly labeled container dispensed by a licensed veterinarian ; and[~~. Nothing in this rule shall affect those activities exempted from the Act as defined in Article 8890, §3.~~]

(3) a breeding soundness examination, which is defined as the assessment of an animal by a veterinarian to determine the animal's ability or potential for reproduction, and includes, but is not limited to, diagnosis by rectal palpation of reproduction structures, ultrasonography, semen collection and microscopic examination, serum/blood chemistry analysis, cytology, and biopsy of tissue.

(b) The activities described in this section do not affect those activities exempted from coverage of the Veterinary Licensing Act, Occupations Code, §801.004.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702741
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 11, 2007
For further information, please call: (512) 305-7563

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.27

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §575.27 concerning Complaints--Receipt, Investigation and Disposition. Basically, the amendments spell out Board procedures in investigating complaints that are currently being followed. For example, one amendment specifies that a licensee must respond to a complaint within 21 days of receipt of the complaint from the Board. Another amendment states that in addition to contacting the complainant during an investigation, the investigator may contact other persons that may be involved in the case, such as second opinion veterinarians. Other changes are for clarification of current procedures. The name of a committee that hears complaints at an informal conference is changed from a "conference committee" to an "enforcement committee," to reflect the Board's common designation of that committee.

Mr. Dewey Helmcamp III, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the section.

Mr. Helmcamp has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to clarify and better explain the Board's investigatory procedures. There will be no effect on small or micro businesses. There will be no economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, e-mail loris.jones@tbvme.state.tx.us, and will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Occupations Code, §801.408.

§575.27. Complaints--Receipt, Investigation and Disposition.

(a) Complaints against licensees.

(1) All complaints filed by the public against board licensees must be in writing on a complaint form provided by the board and signed by the complainant. If a complaint is transmitted to the board orally or by means other than in writing and the complaint alleges facts showing a continuing or imminent threat to the public welfare, the requirement of a written complaint may be waived until later in the investigative process.

(2) Complaints by the board's enforcement section shall be initiated by the opening of a complaint file.

(3) The board shall maintain a log of complainants to whom the board sends a complaint form.

(4) Anonymous written complaints will not be investigated, but will be logged and filed for information purposes only.

(5) The board shall utilize violation code numbers to distinguish between categories of complaints.

(b) Complaints against non-licensees. Complaints against persons alleged to be practicing veterinary medicine without a license may be investigated and resolved informally by the executive director with the consent of the non-licensee, or the Board may utilize formal cease and desist procedures specified in §801.508, Occupations Code. Complaints not resolved by the executive director may be referred to a local prosecutor or the attorney general for legal action.

(c) Investigation of complaints.

(1) The policy of the board is that the investigation of complaints shall be the primary concern of the board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections.

(2) The board shall investigate complaints based on the following allegations, in order of priority:

(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;

(B) acts or omissions of a licensee that resulted in the death of an animal;

(C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and

(D) all other act and omissions that do not fall within categories (A) - (C) of this paragraph.

(3) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant.

(4) Complaints will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint at approximately 45 day intervals.

(5) Upon receipt of a complaint, the director of enforcement will review it and may interview the complainant to develop additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the board, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that the investigation not be initiated. If the executive director concurs with the recommendation, the complainant will be so notified. If the executive director does not concur with the recommendations, the investigation will proceed.

(6) The director of enforcement will assign an investigator to the complaint, and the investigator will send a request for patient records to the licensee. Once the investigator receives the patient records, the investigator will send a copy of the complaint to the licensee, along with a request that the licensee respond to the complaint in writing within 21 days of receipt of the complaint. [~~the licensee will be sent a copy of the complaint and a request for a written response to the complaint.~~]

(7) After the licensee's response to the complaint is received, further investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, the investigator shall contact the complainant. Other persons, such as second opinion or consulting veterinarians, may be contacted. The investigator may request additional medical opinions, supporting documents, and interviews with other witnesses.

(8) Upon the completion of an investigation, the investigator shall prepare a report of investigation (ROI) for review by the director of enforcement, who in turn shall present the ROI to the executive director along with [~~director of enforcement shall present to the executive director a report of investigation (ROI) and~~] a conclusion as to the probability that a violation(s) exists.

(A) If the executive director determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to the board secretary and another board member (the "veterinarian members") who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee should be invited to respond to the complaint at an informal conference at the board offices.

(B) If the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the executive director shall forward the complaint file to a committee of the executive director, director of enforcement, the investigator assigned to the complaint, and general counsel (the "staff committee"), which shall determine whether or not the complaint should be dismissed, investigated further, or settled.

(C) If the veterinarian members determine that a violation has not occurred, the executive director or director of enforcement shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.

(E) A complaint considered by the staff committee shall be referred to an informal conference if:

(i) the staff committee determines that the complaint should not be dismissed or settled;

(ii) the staff committee is unable to reach an agreed settlement; or

(iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.

(d) Informal conferences

(1) The informal conference is the last stage in the investigation of a complaint. The licensee has the right to waive his or her attendance at the conference. The licensee may be represented by counsel.

(2) The board may be represented at the informal conference by an enforcement [~~a conference~~] committee of the executive director, the veterinarian members and a public member of the board [~~(if the complaint involves medical judgment or practice)~~], the director of enforcement, the investigator assigned to the complaint, and the board's general counsel. The complainant and the licensee and the licensee's legal counsel may attend the conference. Any other attendees are allowed at the discretion of the executive director. The executive director or the director of enforcement shall conduct the conference.

(3) Subject to the discretion of the executive director, the following procedure will be followed at the informal conference. The executive director shall explain the purpose of the conference and the rights of the participants, lead the discussion of the allegations of the complaint, and explain the possible courses of action at the conclusion of the conference. The licensee will be asked to respond to the allegations. The complainant will be allowed to make comments relevant to the allegations. Comments of the licensee and complainant must be addressed to the person conducting the conference and not to each other. In the interest of maintaining decorum, the licensee or complainant may be asked to leave the room while the other is talking with the committee. The enforcement committee members may ask questions of the licensee and complainant in order to fully develop the complaint record.

(4) At the conclusion of the informal conference, the enforcement [~~conference~~] committee shall determine if a violation has occurred. If the enforcement [~~conference~~] committee determines that a violation has not occurred, the enforcement [~~conference~~] committee will dismiss the complaint, and will advise all parties of the decision and the reasons why the complaint was dismissed.

(5) If the enforcement [~~conference~~] committee determines that a violation has occurred and that disciplinary action is warranted, the executive director will advise the licensee of the alleged violations and offer the licensee a settlement in the form of an agreed order that specifies the disciplinary action and monetary penalty. With the agreement of the licensee, the enforcement [~~conference~~] committee may recommend that the licensee refund an amount not to exceed the amount the complainant paid to the licensee instead of or in addition to imposing an administrative penalty on the licensee. The executive director must inform the licensee that the licensee has a right to a hearing before an administrative law judge on the finding of the occurrence of the violation, the type of disciplinary action, and/or the amount of the recommended penalty.

(6) Within 20 days after the date the licensee receives the settlement offer, the licensee must submit a written response to the board

(A) accepting the settlement offer and recommended disciplinary action, or

(B) requesting a hearing before an administrative law judge.

(7) If the licensee accepts the settlement offer by signing the agreed order, the agreed order will be docketed for board action at the next regularly scheduled board meeting. The board may approve the agreed order as docketed, approve the agreed order with amendments, or reject the agreed order. If the board approves the agreed order with amendments, the executive director shall mail the amended agreed order to the licensee and the licensee shall have fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the board. If a licensee does not sign an amended agreed order or does not respond within the fourteen (14) days, the complaint will be scheduled for a hearing before an administrative law judge. If the board rejects the agreed order, the complaint may be scheduled for a hearing before an administrative law judge, or the board may direct the executive director to take other appropriate action.

(e) Contested case hearing

(1) If the licensee declines the board's settlement offer, or if the licensee fails to respond timely to the offer, or if the board rejects a proposed agreed order, the investigator of the complaint shall prepare a complaint affidavit containing the allegations against the licensee. The signed and notarized complaint affidavit will then be reviewed by the board's legal counsel and signed by the executive director. The date the executive director signs the complaint affidavit is the official date of filing the complaint affidavit with the board. The complaint affidavit shall serve as the board's pleading in a contested case. At least ten (10) days prior to a scheduled hearing, the complaint affidavit and notice of hearing shall be served on the licensee as set out in subsection (e)(3)(A) of this section.

(2) The executive director shall submit to the State Office of Administrative Hearings (SOAH) a completed Request to Docket Case requesting SOAH to set a hearing and/or assign an administrative

law judge to the contested case. The board shall provide notice of the time, date, and place of the hearing to the licensee. Following issuance of a proposal for decision by the administrative law judge, the board by order may find that a violation has occurred and impose disciplinary action, or find that no violation has occurred. The board shall promptly advise the complainant of the board's action.

(3) Notice of SOAH hearing; continuance and default

(A) The board shall send notice of a contested case hearing before SOAH to the licensee's last known address as evidenced by the records of the board. Notice shall be given by first class mail, certified or registered mail, or by personal service.

(B) If the licensee fails to timely enter an appearance or answer the notice of hearing, the board is entitled to a continuance at the time of the hearing. If the licensee fails to appear at the time of the hearing, the board may move either for dismissal of the case from the SOAH docket, or request that the administrative law judge issue a default proposal for decision in favor of the board.

(C) Proof that the licensee has evaded proper notice of the hearing may also be grounds for the board to request dismissal of the case or issuance of a default proposal for decision in favor of the board.

(f) Contingency. The board president shall appoint another licensee board member to assume the duties of the board secretary in the complaint review and informal conference process in the event the board secretary is unable to serve in the capacity set out in this section.

(g) Report to the board of dismissed complaints. The executive director or the director of enforcement shall advise the board at each scheduled meeting of the complaints dismissed since the last meeting. The information will consist of a summary of the allegations, investigation conducted, reasons for dismissal, and file number.

(h) Use of Private Investigators. The executive director may approve the use of private investigators to assist in investigation of complaints where the use of board investigators is not feasible or economical or where private investigators could provide valuable assistance to the board investigators. Private investigators may be utilized in cases involving honesty, integrity and fair dealing; reinstatement applications; solicitation; fraud; dangerous drugs and controlled substances; and practicing veterinary medicine without a license. Private investigators will be utilized in accordance with existing purchasing rules of the Texas Building and Procurement Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702742
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 11, 2007
For further information, please call: (512) 305-7563

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §577.15 concerning Fee Schedule. The amendments increase by $13.00 the Board's required fees for current license renewals, inactive renewals, and special licenses. Proportional increases are also made in delinquent renewal fees. These fee increases are required to cover the costs of the Board's legislative appropriation for FY2008. No changes are made in fees for the State Board Examination and Special License Examination, and the provisional license fee remains at $255.

Mr. Dewey E. Helmcamp III, Executive Director, has determined that for the first five-year period the amended section is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the section. The fee increases will result in a gain to the state's general revenue of $88,595 in FY2008; $90,558 in FY2009; $90,558 in FY2010; $90,558 in FY2011; and $90,558 in FY2012.

Mr. Helmcamp has also determined that for the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the section will be to accurately match the revenues of the agency with expenditures so as not to charge excessive fees for license renewals. There will be no effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, e-mail loris.jones@tbvme.state.us and will be received for 30 days following publication in the *Texas Register*.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter. The amendments affect the Veterinary Licensing Act, Texas Occupations Code, §801.303 which pertains to renewal license fees.

§577.15. Fee Schedule.

The following fees are proposed by the Board:
Figure: 22 TAC §577.15

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702743
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 11, 2007
For further information, please call: (512) 305-7563

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER E. ECONOMICALLY DISTRESSED AREAS
DIVISION 1. ECONOMICALLY DISTRESSED AREAS PROGRAM

31 TAC §363.511

The Texas Water Development Board (the board) proposes new §363.511 to 31 TAC, Chapter 363, Subchapter E, Division 1, relating to the board's Economically Distressed Areas Program.

The board proposes new §363.511 to be added to Division 1 related to compliance with the model subdivision rules based on recently enacted provisions of Senate Bill 3, Article VI passed by the 80th Legislature during the Regular Session.

Veronica Hinojosa-Segura, Chief Financial Officer, has determined that for the first five-year period the new section is in effect, there will not be fiscal implications on state and local government as a result of enforcement and administration of the new section.

Ms. Hinojosa-Segura has also determined that for the first five years the new section, as proposed, is in effect, the public benefit anticipated as a result of enforcing the proposed new section will be improved coordination of resources and efficiency in administration of the board's Economically Distressed Areas Program. Ms. Hinojosa-Segura has determined there will not be economic costs to small businesses or individuals required to comply with the new section as proposed.

The board has reviewed the proposed rulemaking in accordance with the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule and is not subject to the requirements of that provision.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Joe Reynolds, Attorney, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, or by e-mail to joe.reynolds@twdb.state.tx.us or by fax at (512) 463-5580.

The new section is proposed under the authority of the Texas Water Code, §6.101 which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, as well as under the authority of Texas Water Code sections: §16.343, which authorizes the board to prepare and adopt model rules; §16.344, which authorizes the board to monitor the performance of a political subdivision receiving financial assistance from the Economically Distressed Areas Program; and §17.929, which provides that the board must consider whether a political subdivision has adopted and is enforcing the model rules. Furthermore, the section is proposed under the authority of Senate Bill 3, Article VI passed by the 80th Legislature during the Regular Session, which amends Texas Water Code §16.344 and becomes effective on September 1, 2007.

The statutory provisions affected by the proposed new section are Texas Water Code, Chapters 16 and 17.

§363.511. Temporary Continuation of Funding.

(a) A political subdivision may temporarily continue to receive funds under Subchapter K, Chapter 17 of the Texas Water Code, if the political subdivision submits a request for temporary continuation of funding and the board determines that:

(1) the political subdivision's initial funding application and any amendments for a designated area were reviewed and approved by the board before January 1, 2007;

(2) withholding funds would result in an undue hardship for occupants of the property to be served by unreasonably delaying the provision of adequate water or wastewater services;

(3) withholding funds would result in inefficient use of local, state, or federal funds under the program;

(4) the political subdivision has committed to taking the necessary and appropriate actions to correct any deficiencies in adoption or enforcement of the model rules pursuant to Water Code §16.343 (model rules) within the time designated by the board, but not later than the 90th day after the date the board makes the determinations under this subsection;

(5) the political subdivision has sufficient safeguards in place to prevent the proliferation of colonias; and

(6) during the 30 days after the date the board receives a request under this subsection, the board, after consulting with the Attorney General, Secretary of State, and Texas Commission on Environmental Quality, has not received an objection from any of those entities to the request for temporary continuation of funding.

(b) In applying subsection (a) of this section to applications for increased financial assistance, the board shall only consider areas that were included in the initial application, except that the board may reconsider the eligibility of areas that were the subject of a facility plan in the initial application and that may be determined to be eligible based on criteria in effect September 1, 2005.

(c) The political subdivision shall take necessary and appropriate actions to correct any deficiencies in its adoption and enforcement of the model rules within the time period required by the board, not to exceed the 90-day period described by subsection (a)(4) of this section, and provide evidence of compliance to the board. The board shall discontinue funding unless the board makes a determination based on the evidence provided that the political subdivision has demonstrated sufficient compliance to continue funding.

(d) Except as provided by subsections (a) - (c) of this section, if the board determines that a county or city that is required to adopt and enforce the model rules is not enforcing the model rules, the board shall discontinue funding for all projects within the county or city that are funded under Subchapter K, Chapter 17.

(e) The board may not accept or grant applications for temporary funding under subsection (a) of this section after June 1, 2009.

(f) This section will expire September 1, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702770
Marisol Saenz
Attorney
Texas Water Development Board
Proposed date of adoption: August 27, 2007
For further information, please call: (512) 463-8249

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 403. CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §§403.1, 403.3, 403.11

The Texas Commission on Fire Protection (the Commission) proposes amendments to §403, Criminal Convictions and Eligibility for Certification, particularly the following chapters: §403.1, Purpose; §403.3, Scope; §403.11, Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds. The purpose of these proposed amendments is to update and correct any discrepancies in language to the rules; to insert additional language clarifying convictions of a sexual nature, to correct grammar and punctuation, and to capitalize the letter "c" in the word "Commission".

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal impact on state or local governments.

Jake Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, there will be no public benefit anticipated as a result of enforcing the amendments. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.061, which provides the Commission with the authority to reject persons with criminal convictions to serve as fire protection personnel.

§403.1. Purpose.

(a) The purpose of this chapter is to establish guidelines and criteria on the eligibility of persons with a criminal conviction [~~convictions~~] for a certificate or renewal of a certificate issued by the Texas Commission [~~commission~~] on Fire Protection (the Commission, [~~commission~~]) and to establish procedures for suspension, probation, revocation, or denial of a certificate held or applied for by persons with a criminal conviction [~~convictions~~] pursuant to Chapter 53, Texas Occupations Code.

(b) The duties and responsibilities of persons who hold certifications issued by the Commission, [~~commission~~] each involve matters that directly relate to public safety, specifically to the reduction of loss of life and property from fire. Thus, conduct [,] involving the injury to a person or the destruction of property by fire, relates directly to the fitness of the individual to be fire protection personnel. Fire protection personnel [~~and volunteer fire fighters~~] often have access to areas not generally open to the public. The public relies on the honesty, trustworthiness, and reliability of persons certified by the Commission [~~commission~~]. Thus, crimes involving moral turpitude, including, but not limited to, fraud and dishonesty, are directly relevant. In addition, the ability of such persons to function unimpaired by alcohol or the illegal use of drugs, in dangerous, or potentially dangerous circumstances, including, but not limited to, the operation of emergency vehicles is paramount, in light of the duty to protect the health and safety of the public.

§403.3. Scope.

(a) The guidelines established in this chapter apply to a person who holds or applies for any certificate issued under the Commission's [~~commission's~~] regulatory authority contained in Government Code, Chapter 419.

(b) When a person is charged with, or convicted of a crime of a sexual nature, the conviction of which would require the individual to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure; or

(c) [~~(b)~~] When a person engages in conduct that is an offense under Title 7 of the Texas Penal Code, or a similar offense under the laws of the United States of America, another state, or other jurisdiction, the person's conduct directly relates to the competency and reliability of the person to assume and discharge the responsibilities of fire protection personnel. Such conduct includes, but is not limited to, intentional or knowing conduct, without a legal privilege, that causes, or is intended to cause, a fire or explosion with the intent to injure or kill any person or animal or to destroy or damage any property. The Commission [~~commission~~] may consider the person's conduct even though a final conviction has not occurred and may:

(1) deny to a person the opportunity to be examined for a certificate;

(2) deny the application for a certificate;

(3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;

(4) refuse to renew a certificate;

(5) suspend, revoke or probate the suspension or revocation of an existing certificate; or

(6) limit the terms or practice of a certificate holder to areas prescribed by the Commission [~~commission~~].

(d) [~~(c)~~] When a person's criminal conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the holder of a certificate issued by the Commission [~~commission~~], the Commission [~~commission~~] may:

(1) deny to a person the opportunity to be examined for a certificate;

(2) deny the application for a certificate;

(3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;

(4) refuse to renew a certificate;

(5) suspend, revoke, or probate the suspension or revocation of an existing certificate; or

(6) limit the terms or practice of a certificate holder to areas prescribed by the Commission [~~commission~~].

§403.11. Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds.

(a) If the Commission's [~~commission's~~] Standards Division (the division) proposes to suspend, revoke, limit, or deny a certificate

based on the criteria in this chapter, the division shall notify the individual at his or her last known address as shown in the Commission's [~~commission's~~] records, by registered or certified mail. The notice of intended action shall specify the facts or alleged conduct to warrant the intended action.

(b) If the proposed action is to limit, suspend, revoke, or refuse to renew a current certificate, or deny an application for a new certificate, a written [~~the~~] notice of intended action shall comply with the preliminary notice requirements of Government Code §2001.054(c). The individual may request, in writing, an informal conference with the Commission [~~commission~~] staff in order to show compliance with all requirements of law for the retention of the certificate, pursuant to Government Code §2001.054(c). A written [~~The~~] request for an informal staff conference must be submitted to the division director no later than 15 days after the date of the notice of intended action. If the informal staff conference does not result in an agreed consent order, a formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(c) If the individual does not request an informal staff conference or a formal hearing in writing within the time specified in this section, the individual is deemed to have waived the opportunity for a hearing, and the proposed action will be taken.

(d) If the Commission [~~commission~~] limits, suspends, revokes, or denies a certificate under this chapter, the executive director shall give the person written notice:

(1) of the reasons for the decision;

(2) that the person may appeal the decision of the executive director to the Commission [~~commission~~] in accordance with §401.63 of this title (relating to Appeals to the Commission [~~commission~~]) within 30 days from the date the decision of the executive director is final and appealable;

(3) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas, for judicial review of the evidence presented to the Commission [~~commission~~] and its decision; and that such petition must be filed with the court no later than 30 days after the Commission's [~~commission's~~] action is final and appealable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702758
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 936-3838

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 2. MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

SUBCHAPTER C. CHARGES FOR COMMUNITY SERVICES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§2.101 - 2.103 and 2.105 - 2.112, concerning purpose; application; definitions; accountability; determination of ability to pay; standard charges; billing procedures; payments, collections, and non-payment; monthly ability-to-pay fee schedule; training; and brochure for a person (or parent); and proposes the repeal of §§2.104 and 2.113 - 2.115, concerning principles, exhibit, references, and distribution, in Chapter 2, Mental Retardation Authority Responsibilities, Subchapter C, Charges for Community Services.

BACKGROUND AND PURPOSE

Because they originated at the Texas Department of Mental Health and Mental Retardation, the rules in Chapter 2, Subchapter C, currently contain references to both mental health and mental retardation services. The purpose of the proposal is to eliminate references related to mental health issues and tailor the remaining rule language exclusively to mental retardation services.

The proposal also streamlines DADS' process for updating a person's financial assessment. Instead of being required to annually update every person's financial assessment, the proposal will allow a mental retardation authority (MRA) to exclude certain persons whose Medicaid status indicates that they do not have an ability to pay for non-Medicaid services.

In addition, the proposal updates terminology and agency names and corrects rule cross-references to ensure that the rules reflect changes resulting from the consolidation of health and human services agencies in 2004 and updates the subchapter to make it consistent with other DADS rules.

SECTION-BY-SECTION SUMMARY

The amendments to §§2.101 - 2.103 and 2.105 - 2.112 and the repeal of §§2.104 and 2.113 - 2.115 update the rule by eliminating language and requirements related to mental health services.

In addition, the amendment to §2.102 clarifies and updates rule language, and deletes subsection (c), because subsection (a) already states that the rules apply to a parent of a person under age 18 years.

The amendment to §2.103 adds definitions for "DADS," "MMF," "MRA," "MR priority population," and "parent," and deletes the definitions of "local authority," "priority population," and "state MH facility." The amendment also clarifies rule language and updates terminology.

The amendment to §2.105 updates MRA accountability requirements, clarifies rule language, and updates terminology, agency references, and rule cross-references.

The amendment to §2.106 streamlines the process governing the determination of ability to pay, clarifies rule language, and updates terminology and rule cross-references.

The amendment to §2.108 updates terminology and an agency reference.

The amendment to §2.109 clarifies rule language and updates terminology, agency references, and rule cross-references.

The amendment to §2.110 states that the Monthly Ability-to-Pay Fee Schedule can be found on the DADS website and updates an agency reference.

The amendment to §2.111 updates MRA staff training requirements.

The repeal of §§2.104 and 2.113 - 2.115 deletes sections that are not necessary to have in rule and makes Subchapter C more consistent with the majority of DADS rules, which do not include references to regulations and statutes, or information about distributing copies of the completed rules.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments and repeal, because the proposal imposes no new requirements on MRAs.

PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is an updated and clarified rule base that is more accurate and easier for the public and MRAs to use and understand.

Mr. Jessee anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Marcia Shultz at (512) 438-3532 in DADS' Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-026, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.*To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.*The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 026" in the subject line.

40 TAC §§2.101 - 2.103, 2.105 - 2.112

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §534.067, which requires DADS to establish a uniform fee collection policy for mental retardation authorities.

The amendments implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §534.067.

§2.101. Purpose.

The purpose of this subchapter is to comply with [~~the~~] Texas Health and Safety Code, §534.067, by establishing a uniform fee collection policy for an MRA [~~local authorities~~] that:

(1) - (3) (No change.)

§2.102. Application.

(a) This subchapter applies to an MRA [~~all local authorities~~] for community services contracted for through the performance contract that the MRA [~~authority~~] provides directly or through a subcontractor [~~subcontractors~~] to a member [~~members~~] of the MR priority population. This subchapter also applies to an adult person [~~persons~~] in the MR priority population[~~,~~] and a parent of a person [~~parents of persons~~] under age 18 years in the MR priority population[~~, who are seeking or receiving services~~].

(b) This subchapter does not apply to:

(1) a program or service [~~programs and services~~] that is [~~are~~] prohibited by statute or regulation from charging a fee [~~fees~~] to a person [~~persons~~] served [~~(e.g., Early Childhood Intervention Program)~~];

(2) the DADS In-Home and Family Support Program--Mental Retardation [~~TDMHMR In-Home and Family Support Program~~];

(3) [~~inpatient services in a state MH facility and non-crisis~~] residential services as described in the performance contract; and

(4) specialized services mandated by the Omnibus Budget Reconciliation Act (OBRA) of 1987, as amended by OBRA 90, for a preadmission screening and [~~annual~~] resident review [~~reviews~~] (PASARR) provided to a non-Medicaid eligible person [~~persons~~].

[~~(c) In this subchapter all references to a parent means the requirement is applicable to the parent of a person under age 18 years who is in the priority population and who is seeking or receiving services.~~]

§2.103. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Community services or services--Except for [~~inpatient services in a state MH facility and non-crisis~~] residential services, eligibility determination, and screening, the required and optional [~~mental health and~~] mental retardation services described in the performance contract.[~~, including:~~]

[(A) 24-hour emergency screening and rapid crisis stabilization services;]

[(B) community-based crisis residential services or inpatient services in a mental health facility that is not a state MH facility;]

[(C) community-based assessments, including the development of interdisciplinary treatment plans, and diagnosis and evaluation services;]

[(D) family support services, including respite care;]

[(E) case management services (service coordination);]

[(F) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and]

[(G) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.]

(3) DADS--The Department of Aging and Disability Services.

(4) [(3)] Extraordinary expenses--Major medical or health related expenses, major casualty losses, and child care expenses for the previous year or projections for the next year.

(5) [(4)] Family members--

(A) For an unmarried person under [the] age [of] 18 years--The person, the person's parents, and the dependents of the parents, if residing in the same household;

(B) For an unmarried person age 18 years or older--The person and the person's [his/her] dependents; or

(C) For a married person of any age--The person, the person's [his/her] spouse, and their dependents.

(6) [(5)] Gross income--Revenue from all sources before taxes and other payroll deductions. The term does not include child support received.

(7) [(6)] Inability to pay--The person's maximum monthly fee is zero and the person:

(A) does not have third-party coverage;

(B) has third-party coverage, but has exceeded the maximum benefit of the covered service(s) or the third-party coverage will not pay because the services needed by the person are not covered services; or

(C) has not identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense).*

(8) [(7)] Income-based public insurance--Government funded third-party coverage that bases eligibility on income (i.e., CHIP and Medicaid).

[(8) Local authority--An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).]

(9) MMF--Maximum monthly fee. A fee that is calculated in accordance with §2.106(b) of this chapter (relating to Determination of Ability to Pay).

(10) MRA--Mental retardation authority. An entity to which the Health and Human Services Commission's authority and responsibility described in Texas Health and Safety Code, §531.002(11) have been delegated.

(11) MR priority population--Groups of persons identified in the Health and Human Services Commission's current strategic plan as being most in need of mental retardation services.

(12) Parent--A biological or adoptive parent of a person under age 18 years.

(13) [(9)] Performance contract--A written agreement between DADS and an MRA [TDMHMR and a local authority] for the provision of one or more functions as described in [the] Texas Health and Safety Code, §533.035(a).

(14) [(10)] Person--A person in the MR priority population who is seeking or receiving services through an MRA [a local authority].

[(11) Priority population--Those groups of persons with mental illness or mental retardation identified in TDMHMR's current strategic plan as being most in need of mental health and mental retardation services.]

(15) [(12)] Significant financial change--Any change in the person's (or parent's) financial status as shown in the financial documentation, as described in §2.105(d) of this subchapter [§412.105(d) of this title] (relating to Accountability), that affects the person's (or parent's) ability to pay. Examples of a significant financial change are:

(A) a reduction in income due to the loss of a job or due to a reduction in hours worked on a job;

(B) an increase in income because of an inheritance or a salary increase;

(C) an increase or decrease in the number of family members;

(D) the gain or loss of third-party coverage; and

(E) an increase or decrease in extraordinary expenses.

(16) [(13)] Standard charge--A fixed price for a community service or unit of service.

[(14) State MH facility--A state hospital or a state center with an inpatient component.]

(17) [(15)] Team--A person's service planning team [The interdisciplinary team, multidisciplinary team, or treatment team].

(18) [(16)] Third-party coverage--A public or private payer of community services [for a specific person that is not the person] (e.g., Medicaid, Medicare, private insurance, CHIP, TRICARE).

§2.105. Accountability.

(a) Prohibition from denying services. An MRA is [Local authorities are] prohibited from denying services [to a person]:

(1) to a person because of the person's inability to pay for the services;

(2) to a person in crisis, and the denial is because:

(A) - (C) (No change.)

(D) the person had [his/her] services involuntarily reduced or terminated for non-payment under §2.109(d) [§412.109(d)] of this title (relating to Payments, Collections, and Non-payment); or

(3) to a person pending resolution of an issue relating solely to payment for services, including failure of the person (or parent) to comply with any requirement in subsection [subsections] (c), (d), (e), or [and] (g) of this section.

(b) Identifying funding sources. An MRA must identify and access [~~Local authorities are responsible for identifying and accessing~~] available funding sources other than DADS [~~TDMHMR~~], and assist a person (or parent) [~~for assisting persons (and parents)~~] in identifying and accessing available funding sources other than DADS [~~TDMHMR~~], to pay for services. Available funding sources may include third-party coverage, state and/or local governmental agency funds (e.g., crime victims fund), Qualified Medicare Beneficiary (QMB) Program, [~~indigent pharmaceutical programs,~~] or a trust that provides for the person's need for community services [~~healthcare and rehabilitative needs~~].

(c) Requirement for a parent [~~parents~~] to enroll a child [~~their children~~] in income-based public insurance. A parent of a child [~~Parents of children~~] who may be eligible for Medicaid or the Children's [~~Childrens~~] Health Insurance Program (CHIP) must enroll the child [~~their children~~] in Medicaid or CHIP or provide documentation that the child has [~~they have~~] been denied Medicaid or CHIP benefits or that the child's [~~their~~] Medicaid or CHIP enrollment is pending. An MRA must [~~The local authority shall~~] provide assistance as needed to facilitate the enrollment process.

(d) Financial documentation. A person (or parent) [~~If requested by the local authority, persons (or parents)~~] must provide the following financial documentation:

(1) - (4) (No change.)

(e) Authorizing third-party coverage payment to the MRA [~~local authority~~]. A person (or parent) [~~Persons (and parents)~~] with third-party coverage must execute an assignment of benefits authorizing third-party coverage payment to the MRA [~~local authority~~].

(f) Failure to comply.

(1) Except as provided by paragraph (2) of this subsection, if the person (or parent) fails to comply with any requirement in subsection (c), (d), (e), or (g) [~~subsections (c)-(e)~~] of this section, then the MRA must charge [~~local authority will charge~~] the person (or parent) the standard charge(s) for services. If, within 30 days after the person (or parent) initially failed to comply, the person (or parent) complies with the requirements, then the MRA must adjust [~~local authority will adjust~~] the person's account to retroactively reflect compliance.

(2) The MRA may [~~local authority will~~] not charge the person the standard charge(s) for services if the MRA [~~local authority~~] makes a decision, which [~~based on a clinical determination that~~] is documented and includes input from the person's team, that the person's failure to comply is related to the person's functioning limitations [~~mental illness or mental retardation~~]. The decision [~~clinical determination~~] must be reassessed at least annually [~~every three months~~]. If the MRA [~~local authority~~] decides that a person's failure to comply is related to the person's functioning limitations [~~mental illness or mental retardation~~], then the MRA [~~local authority~~] must develop and implement a plan to reduce or eliminate the barriers related to the person's failure to comply.

(g) Requirement for an adult person [~~persons~~] to apply for Supplemental Security Income (SSI) [~~SSI~~] to become eligible for Medicaid. An adult person [~~Adult persons~~] who may be eligible for Medicaid must apply for SSI [~~Supplemental Security Income (SSI)~~] or provide documentation that the person has [~~they have~~] been denied SSI or that the person's [~~their~~] SSI application is pending. The MRA must provide [~~local authority shall provide~~] assistance as needed to facilitate all aspects of the application process. [~~If the adult person is unable to act in accordance with the requirement because of the person's mental illness or mental retardation, then the local authority must develop and implement a plan to reduce or eliminate the barriers related to the person's inability to act in accordance with the requirement.~~]

§2.106. Determination of Ability to Pay.

(a) Financial assessment. [~~The local authority must conduct and document a financial assessment for each person within the first 30 days of services. The local authority must update each person's financial assessment at least annually and whenever a significant financial change (as defined) occurs as long as the person continues to receive services. The financial assessment is accomplished using the financial documentation listed in §412.105(d) of this title (relating to Accountability), which represents the finances of the:~~]

(1) An MRA must conduct and document a financial assessment for a person within 30 days after the person begins to receive services.

(2) Except for a Medicaid recipient who is receiving Supplemental Security Income (SSI) benefits but not receiving employment income, the MRA must update a person's financial assessment at least annually while the person is receiving services. The MRA must monitor the continuing availability of benefits for a person with income-based public insurance.

(3) The MRA must update a person's financial assessment if the person experiences a significant financial change.

(4) The financial assessment must be conducted using the financial documentation listed in §2.105(d) of this subchapter (relating to Accountability) that represents the finances of:

(A) the person who is age 18 years or older and the person's spouse; or

(B) the parents of the person who is under age 18 years.

[~~(1) person who is age 18 years or older and the person's spouse; or~~]

[~~(2) parents of the person who is under age 18 years.~~]

(b) MMF [~~Maximum monthly fee~~]. A person's MMF [~~maximum monthly fee~~] is based on the financial assessment and calculated using the Monthly Ability-To-Pay Fee Schedule, as referenced in §2.110 of this subchapter (relating to Monthly Ability-To-Pay Fee Schedule) [~~as Exhibit A in §412.113 of this title (relating to Exhibit)~~]. The calculation is based on the number of family members and annual gross income, reduced by extraordinary expenses paid during the past 12 months or projected for the next 12 months. No other sliding scale is used.

(1) An MMF [~~A maximum monthly fee~~] that is greater than zero is established for a person who is [~~persons who are~~] determined as having an ability to pay. If two or more members of the same family are receiving services, then the MMF [~~maximum monthly fee~~] is for the family.

(2) An MMF [~~A maximum monthly fee~~] of zero is established for a person who is [~~persons who are~~] determined as having an inability to pay.

(c) Third-party coverage.

(1) (No change.)

(2) Third-party coverage that will not pay.

(A) If the person's third-party coverage will not pay for needed services because the MRA [~~local authority~~] does not have an approved provider on its network, then the MRA must [~~local authority will~~] propose to refer the person to the person's [~~his/her~~] third-party

coverage to identify a provider for which the third-party coverage will pay unless:

(i) the MRA [~~local authority~~] is identified as being responsible for providing court-ordered [~~outpatient~~] services to the person;

(ii) the MRA [~~local authority~~] is able to negotiate adequate payment for services with the person's third-party coverage; or

(iii) (No change.)

(B) If the MRA [~~local authority~~] proposes to refer the person to the person's [~~his/her~~] third-party coverage as described in paragraph (2)(A) of this subsection, then the MRA must [~~local authority will~~] provide written notification to the person (or parent) in accordance with §2.109(e)(1) of this subchapter [~~§412.109(e)(1) of this title~~] (relating to Payments, Collections, and Non-payment), which provides an opportunity to appeal. The MRA [~~local authority~~] must also comply with §2.109(e)(2) - (3) of this subchapter [~~§412.109(e)(2) - (3)~~] as initiated by the person (or parent).

(C) If the MRA [~~local authority~~] refers the person to [~~his/her~~] third-party coverage, then the MRA must [~~local authority will~~] assist the person (or parent) in identifying a provider for which the third-party coverage will pay.

(D) If a person who has been referred to [~~his/her~~] third-party coverage is unable to identify or access needed services from an approved provider or if access will be unduly delayed, then the MRA must [~~local authority will~~]:

(i) (No change.)

(ii) if [~~clinically~~] indicated, ensure the provision of the needed services to the person pending resolution.

(E) The MRA must [~~local authority will~~] maintain documentation of:

(i) - (iii) (No change.)

(d) Social Security work incentive provisions. A person who identified payment for specific needed services in the person's [~~his/her~~] approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*) is determined as having an ability to pay for the specific services. A person is [~~Persons are~~] not required to identify payment for any service for which the person [~~they~~] may be eligible as part of the person's [~~their~~] approved plan for utilizing the Social Security work incentive provisions.

(e) Notification. After a financial assessment is conducted, the MRA [~~local authority~~] must provide written notification to the person (or parent) [~~(or parents)~~] that includes:

(1) (No change.)

(2) a copy of the financial assessment form [~~that is signed by the person (or parent)~~] and a copy of the Monthly Ability-to-Pay Fee Schedule, with the applicable areas indicated (i.e., annual gross income, number of family members);

(3) the amount of the MMF [~~maximum monthly fee~~];

(4) the name and phone number of at least one MRA [~~local authority~~] staff who the person (or parent) may contact during office hours to discuss the information contained in the written notification; and

(5) (No change.)

§2.107. Standard Charges.

An MRA [~~Each local authority~~] must establish, at least annually, a reasonable standard charge for a [~~each~~] community service as indicated in the performance contract. The standard charge must cover, at a minimum, the MRA's [~~local authority's~~] cost of ensuring the provision of the service.

§2.108. Billing Procedures.

(a) Monthly account.

(1) The MRA must [~~local authority will~~] maintain a monthly account for a [~~each~~] person that lists all services provided to the person during the month and the standard charges for the services. Each service listed must [~~will~~] indicate whether the service is:

(A) - (D) (No change.)

(2) (No change.)

(b) Accessing funding sources. The MRA [~~local authority~~] must access all available funding sources before using DADS [~~TDMHMR~~] funds to pay for a person's services. Funding sources may include third-party coverage, state and/or local governmental agency funds (e.g., crime victims fund), Qualified Medicare Beneficiary (QMB) Program, [~~indigent pharmaceutical programs,~~] or a trust that provides for the person's need for community services [~~healthcare and rehabilitative needs~~].

(c) Billing third-party coverage. The MRA bills [~~local authority will bill~~] the person's third-party coverage the monthly account amount for covered services. If the MRA [~~local authority~~] has negotiated a reimbursement amount with the third-party coverage that is different from the monthly account amount, then the MRA [~~local authority~~] may bill the third-party coverage the negotiated reimbursement amount for covered services.

(d) Billing the person (or parent) [~~(or parents)~~].

(1) No third-party coverage. If the monthly account amount for services not covered by third-party coverage:

(A) exceeds the person's MMF [~~maximum monthly fee (MMF)~~], then the amount is reduced to equal the MMF and the MRA [~~local authority~~] bills the person (or parent) the MMF; or

(B) is less than the person's MMF, then the MRA [~~local authority~~] bills the person (or parent) the monthly account amount for services not covered by third-party coverage.

(2) Medicare third-party coverage. Nothing in this paragraph is intended to conflict with any applicable law, rule, or regulation with which an MRA [~~a local authority~~] must comply.

(A) (No change.)

(B) If the total amount applied toward the person's MMF as described in paragraph (2)(A) of this subsection:

(i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the MRA [~~local authority~~] bills the person (or parent) the MMF; or

(ii) is less than the person's MMF, then the MRA [~~local authority~~] bills the person (or parent) the total amount applied toward the MMF.

(3) Non-Medicare third-party coverage.

(A) Cost-sharing exceeds MMF. If the amount of all applicable co-payments, co-insurance, and deductibles for services listed in the monthly account as covered by non-Medicare third-party coverage exceeds the person's MMF, then the MRA [~~local authority~~] bills

the person (or parent) all applicable co-payments, co-insurance, and deductibles.

(B) Cost-sharing does not exceed MMF.

(i) (No change.)

(ii) If the total amount applied toward the person's MMF as described in paragraph (3)(B)(i) [~~(3)(B)~~] of this subsection:

(I) exceeds the person's MMF, then the amount is reduced to equal the MMF and the MRA [~~local authority~~] bills person (or parent) the MMF; or

(II) is less than the person's MMF, then the MRA [~~local authority~~] bills the person (or parent) the total amount applied toward the MMF.

(C) Annual cost-sharing limit. If the person (or parent) has reached the person's [~~his/her~~] annual cost-sharing limit (i.e., maximum out-of-pocket expense) as verified by the non-Medicare third-party coverage, then the MRA must [~~local authority will~~] not bill the person (or parent) any co-payments, co-insurance, or deductibles, as applicable to the annual cost-sharing limit, for services covered by the non-Medicare third-party coverage for the remainder of the policy-year.

(4) Social Security work incentive provisions.

(A) If the person identified a payment amount for specific services in the person's [~~his/her~~] approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense)*, then the MRA bills [~~local authority bills~~] the person the monthly account amount for the specific services up to the identified payment amount. If the monthly account amount for the specific services is greater than the identified payment amount, then the remaining balance is applied toward the person's MMF.

(B) (No change.)

(C) If the total amount applied toward the person's MMF as described in paragraph (4)(B) of this subsection:

(i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the MRA [~~local authority~~] bills person (or parent) the MMF; or

(ii) is less than the person's MMF, then the MRA [~~local authority~~] bills the person (or parent) the total amount applied toward the MMF.

(e) Statements.

(1) The MRA must [~~local authority will~~] send to a person (or parent) [~~persons (and parents)~~] who has [~~have~~] been determined as having the ability to pay monthly or quarterly statements that include:

(A) - (E) (No change.)

(2) Unless requested otherwise, the MRA may [~~local authority does~~] not send a statement [~~statements~~] to a person (or parent) [~~persons (or parents)~~] who has [~~have~~] an ability to pay if the person (or parent) maintains [~~they maintain~~] a zero balance (i.e., the person (or parent) does not currently owe any money).

(3) Unless requested otherwise, the MRA may [~~local authority does~~] not send a statement [~~statements~~] to a person (or parent) [~~persons (or parents)~~] who has [~~have~~] an inability to pay.

§2.109. Payments, Collections, and Non-payment.

(a) Payment and collection.

(1) A person (or parent) must [~~Persons (and parents) are responsible for~~] promptly pay [~~paying~~] all charges owed to the MRA [~~local authority~~].

(2) An MRA must make [~~Local authorities are responsible for making~~] reasonable efforts to collect payments from all available funding sources before accessing DADS [~~TDMHMR~~] funds to pay for a person's [~~persons'~~] services.

(b) Financial hardship. If a person (or parent) claims financial hardship as provided in this subsection, then the MRA [~~local authority~~] must determine whether a significant financial change (as defined) has occurred. If a significant financial change has occurred, then the MRA [~~local authority~~] must immediately update the person's (or parent's) financial assessment as required in §2.106(a) of this subchapter [~~412.106(a) of the title~~] (relating to Determination of Ability to Pay).

(1) If a person (or parent) claims, and provides documentation, that financial hardship prevents prompt payment of all charges owed, then the MRA [~~local authority~~] may arrange for the person (or parent) to pay a lesser amount each month.

(2) If a person (or parent) claims that financial hardship prevents prompt payment of all charges owed, then the MRA [~~local authority~~] must arrange for the person (or parent) to pay a lesser amount each month only if the person has third-party coverage that is neither income-based public insurance nor Medicare and the person's cost-sharing exceeds the person's [~~his/her~~] MMF. The lesser amount:

(A) - (B) (No change.)

(3) (No change.)

(c) Discontinuing charges to a person (or parent) [~~persons (or parents)~~] for services. If the MRA [~~local authority~~] makes a decision, which [~~based on a clinical determination that~~] is documented and includes input from the person's team, that being charged for services and receiving statements will result in a significant reduction in the functioning [~~level~~] of the person or the person's (or parent's) refusal or rejection of the needed services, then the MRA must stop [~~local authority will discontinue~~] charging the person (or parent) for services and stop sending statements. The decision [~~clinical determination~~] must be reassessed at least annually [~~every three months~~]. If the MRA [~~local authority~~] decides to discontinue charging the person (or parent) for services, then the MRA [~~local authority~~] must develop and implement a plan to address the issues related to the person's functioning limitations [~~level~~] or the person's (or parent's) refusal or rejection of the needed services.

(d) Involuntary reduction or termination of services for non-payment by person (or parent).

(1) The MRA must [~~local authority will~~] address the past-due account of a person (or parent) who is not making payments to ensure reasonable efforts to secure payments are initiated with the person (or parent). For example, if the MRA [~~local authority~~] determines that non-payment is related to financial hardship, then the MRA [~~local authority~~] may assist the person (or parent) in making arrangements to pay a lesser amount each month in accordance with subsection (a)(2) of this section or if the MRA [~~local authority~~] makes a decision, which [~~based on a clinical determination that~~] is documented and includes input from the person's team, that non-payment is related to the person's functioning limitations [~~mental illness or mental retardation~~], then the person's service [~~treatment/service~~] plan may be modified to address the non-payment.

(2) If the MRA [~~local authority~~] makes a decision, which [~~based on a clinical determination that~~] is documented and includes input from the person's team, that non-payment is not related to the

person's functioning limitations [~~mental illness or mental retardation~~] and, despite reasonable efforts to secure payment, the person (or parent) does not pay, then the MRA [~~local authority~~] may propose to involuntarily reduce or terminate the person's services. The MRA [~~local authority~~] may not propose to involuntarily reduce or terminate the person's services if:

(A) the proposed action would result in a significant reduction in the person's functioning;

(B) the proposed action would put at risk the person's health, safety, or support system; or

(C) the MRA [~~the proposed action would cause the person's mental or physical health to be at imminent risk of serious deterioration or the local authority~~] is identified as being responsible for providing court-ordered [~~outpatient~~] services to the person.

(3) If the MRA [~~local authority~~] proposes to involuntarily reduce or terminate the person's services, then the MRA [~~local authority~~] must:

(A) maintain [~~clinical~~] documentation that the proposed action would not result in a significant reduction in the person's functioning or put at risk the person's health, safety, or support system [~~cause the person's mental or physical health to be at imminent risk of serious deterioration~~]; and

(B) (No change.)

(e) Notification, Appeal, and Review.

(1) Notification. The MRA must [~~local authority will~~] notify the person (or parent) in writing of the proposed action (i.e., to involuntarily reduce or terminate the person's services or refer the person to [~~his/her~~] third-party coverage) and the right to appeal the proposed action in accordance with §2.46 of this chapter [~~§401.464 of this title~~] (relating to Notification and Appeals Process). The notification must [~~will~~] describe the time frames and process for requesting an appeal and include a copy of this subchapter. If the person (or parent) requests an appeal within the prescribed time frame, then the MRA must [~~local authority may~~] not take the proposed action while the appeal is pending. The MRA [~~local authority~~] may take the proposed action if the person (or parent) does not request a review within the prescribed time frame.

(2) Appeal and appeal decision. The MRA must conduct the appeal [~~is conducted~~] in accordance with §2.46(g) of this chapter [~~§401.464(g) of this title (relating to Notification and Appeals Process)~~]. The MRA must notify [~~local authority will notify~~] the person (or parent) in writing of the appeal decision in accordance with §2.46(h) of this chapter [~~§401.464(h)~~] and the right to have the appeal decision reviewed by the Office of Consumer Rights and Services at DADS [~~and Rights Protection - Ombudsman (1-800-252-8154) at TDMHMR Central Office~~] if the person (or parent) is dissatisfied with the appeal decision. The notification must describe the time frames and process for requesting a review.

(3) Review of appeal decision. If the person (or parent) is dissatisfied with the appeal decision, then the person (or parent) may request a review by the Office of Consumer Rights and Services at DADS [~~and Rights Protection - Ombudsman at TDMHMR Central Office~~]. A request for review must be submitted to the Office of Consumer Rights and Services, Department of Aging and Disability Services, P.O. Box 149030, MC E-249, Austin, TX 78714-9030 [~~and Rights Protection - Ombudsman, TDMHMR, P.O. Box 12668, Austin, TX 78751~~], within 10 working days after [~~of~~] receipt of the appeal decision. If the person (or parent) requests a review within the prescribed time frame, then the MRA must [~~local authority may~~] not take the proposed action while the review is pending. The MRA [~~local authority~~] may take the proposed action if the person (or parent) does not request a review within the prescribed time frame and the appeal decision upholds the decision to take the proposed action.

(A) A person (or parent) who requests a review may choose to have the reviewer conduct the review:

(i) by telephone conference with the person (or parent) and a representative from the MRA [~~local authority~~] and make a decision based upon verbal testimony made during the telephone conference and any documents provided by the person (or parent) and the MRA [~~local authority~~]; or

(ii) by making a decision based solely upon documents provided by the person (or parent) and the MRA [~~local authority~~] without the presence of any of the parties involved.

(B) The review:

(i) is [~~will be~~] conducted no sooner than 10 working days and no later than 30 working days after [~~of~~] receipt of the request for review unless an extension is granted by the director of the Office of Consumer Rights and Services [~~and Rights Protection - Ombudsman~~];

(ii) includes [~~will include~~] an examination of the pertinent information concerning the proposed action and may include consultation with DADS [~~TDMHMR clinical staff and~~] staff who are responsible for the policy contained in this subchapter;

(iii) results [~~will result~~] in a final decision which will uphold, reverse, or modify the original decision to take the proposed action; and

(iv) is the final step of the appeal process for involuntarily reducing or terminating the person's services for non-payment and for referring the person to [~~his/her~~] third-party coverage.

(C) Within five working days after the review, the reviewer sends [~~will send~~] written notification of the final decision to the person (or parent) and the MRA [~~local authority~~].

(D) The MRA must [~~local authority will~~] take appropriate action consistent with the final decision.

(f) Prohibition of financial penalties. The MRA must [~~local authority may~~] not impose financial penalties on a person (or parent).

(g) Debt collection. The MRA [~~Local authorities~~] must make reasonable efforts to collect debts before an account is referred to a debt collection agency. The MRA must document its [~~Local authorities must document their~~] efforts at debt collection.

(1) The MRA [~~Local authorities~~] must incorporate into a written agreement or contract for debt collection provisions that state that both parties must [~~shall~~]:

(A) (No change.)

(B) not harass, threaten, or intimidate a person or the person's family [~~persons and their families~~].

(2) The MRA must [~~Local authorities will~~] enforce the provisions contained in paragraph (1) of this subsection.

§2.110. Monthly Ability-to-Pay Fee Schedule.

The Monthly Ability-To-Pay Fee Schedule, which can be found at www.dads.state.tx.us [~~referenced as Exhibit A in §412.113 of this title (relating to Exhibit)~~], is based on 150% of the Federal Poverty Guidelines. DADS [~~TDMHMR~~] may revise the Monthly Ability-To-Pay Fee Schedule, based on any changes in the Federal Poverty Guidelines.

§2.111. Training.

[~~In accordance with a prescribed training program developed by TDMHMR, all local authority~~] MRA staff who are involved in implementing or explaining the content of this subchapter must receive initial training and demonstrate competency prior to performing tasks related to charging for community services [~~and annually thereafter~~]. Such staff must demonstrate competency annually thereafter.

§2.112. Brochure for a Person (or Parent) [~~Persons (and Parents)~~].

(a) DADS makes available on its website [~~TDMHMR will develop~~] a brochure that contains the policies for charging for community services that are contained in this subchapter, including:

(1) - (2) (No change.)

(b) An MRA [~~The local authority~~] must provide a person (or parent) [~~persons (and parents)~~] a copy of the brochure prior to the person's [~~their~~] entry into services, except in a crisis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702781
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 438-3734

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40 TAC §§2.104, 2.113 - 2.115

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §534.067, which requires DADS to establish a uniform fee collection policy for mental retardation authorities.

The repeal implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §534.067.

§2.104. Principles.

§2.113. Exhibit.

§2.114. References.

§2.115. Distribution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702782
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 438-3734

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CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SUBCHAPTER E. LICENSURE SURVEYS

DIVISION 2. THE SURVEY PROCESS

40 TAC §97.527

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §97.527, concerning post-survey procedures, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies.

BACKGROUND AND PURPOSE

The purpose of the amendment is to update the time frames and procedures that a home and community support services agency (agency) must follow to request an informal review of deficiencies (IRoD). The amendment also allows an agency submitting an IRoD request form additional time to submit a rebuttal letter and supporting documentation.

SECTION-BY-SECTION SUMMARY

The amendment to §97.527 requires an agency to postmark or fax an IRoD request form to DADS within 10 days after the agency receives official written notice of the survey findings. The amendment also requires a rebuttal letter and supporting documentation to be received by the DADS Survey and Certification Enforcement Unit within seven days after the postmark or fax date of the IRoD request form.

In addition, the amendment adds language detailing what an agency must include in a rebuttal letter and supporting documentation and states that the written decision on the IRoD issued by the DADS Survey and Certification Enforcement Unit is final.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment, because the proposal does not place any new requirements on agencies that would cause them to alter their business practices.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is clearer direction and greater flexibility for an agency in responding to a statement of violation or deficiency.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sylvia Trevino at (361) 878-3419 in DADS' Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-004, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.*To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.*The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 004" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which authorizes DADS to license and regulate home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Human Safety Code, §§142.001 - 142.030.

§97.527. Post-Survey Procedures.

(a) - (j) (No change.)

(k) If an agency disagrees with the survey findings, the agency may request an IRoD and submit additional written information to refute a violation or deficiency to demonstrate compliance in an informal setting.

(1) (No change.)

(2) To request an IRoD, an agency must: [~~submit the form for requesting the IRoD (included in the official written notification of the survey findings), a rebuttal letter, and supporting documentation to DADS.~~]

(A) mail or fax a complete and accurate IRoD request form to the address or fax number listed on the form, which [~~The original request form~~] must be postmarked or faxed within 10 days after the date of receipt of the official written notification of the survey findings; [~~and be received at the DADS address listed on the form within 10 days after the date of the postmark.~~]

(B) mail or fax a rebuttal letter [~~A copy of the completed request for IRoD form~~] and supporting documentation to the address or fax number listed on the IRoD request form and ensure receipt by the DADS Survey and Certification Enforcement Unit within seven days after the postmark or fax date of the IRoD request form; and [~~must also be sent to the designated survey office.~~]

(C) mail or fax a copy of the IRoD request form, rebuttal letter, and supporting documentation to the designated survey office within the same time frames each is submitted to the DADS Survey and Certification Enforcement Unit.

(3) An agency may not submit information after the deadlines established in paragraph (2)(A) and (B) of this subsection unless DADS requests additional information. The agency's response to DADS' request for information must be received within three working days after the request is made.

(4) [~~(3)~~] An agency waives its right to an IRoD if the agency fails to submit the required information to the DADS Survey and Certification Enforcement Unit within the required time frames. [~~frame. The agency may not submit additional information after the 10 days allowed, unless DADS' review staff request additional information for clarification.~~]

(5) An agency must present sufficient information to the DADS Survey and Certification Enforcement Unit to support the agency's desired IRoD outcome.

(6) The rebuttal letter and supporting documentation must include:

(A) the disputed deficiencies or violations;

(B) the reason the deficiencies or violations are disputed;

(C) the desired outcome for each disputed deficiency or violation; and

(D) attachments from client records, applicable policies and procedures, or other supporting documentation or information that directly demonstrates that the deficiency or violation should not have been cited.

(7) The written decision issued by DADS after the completion of its review is final.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702780
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 438-3734

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION
SUBCHAPTER E. SANCTIONS

40 TAC §§800.152, 800.191 - 800.200

The Texas Workforce Commission (Commission) proposes to amend the following sections of Chapter 800 relating to General Administration:

Subchapter E, Sanctions, §800.152 and §800.191

The Commission proposes the following new sections to Chapter 800, relating to General Administration:

Subchapter E, Sanctions, §§800.192 - 800.200

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed rule change is to establish streamlined and administratively efficient appeals procedures for Local Workforce Development Boards (Boards) sanction hearings.

Under a separate, but concurrent, rulemaking proposal, the Commission is proposing the repeal of Chapter 823, General Hearings rules, and is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals rules. Certain sections of repealed Chapter 823 have been modified and incorporated into this chapter, which sets forth procedures for appeals of Board sanction determinations.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER E. SANCTIONS

The Commission proposes amendments to Subchapter E, as follows:

§800.152. Definitions

Section 800.152 adds new definitions, which are retained with minor modifications, from the concurrent repeal of Chapter 823.

Section 800.152(2) defines a "hearing" as an informal, orderly, and readily available proceeding held before an impartial hearing officer at which a party or hearing representative may present evidence to show that the Agency's determination of sanctions shall be reversed, affirmed, or modified.

Section 800.152(3) defines a "hearing officer" as an Agency employee designated to conduct hearings and issue proposals for decisions.

Section 800.152(4) defines a "hearing representative" as any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

Section 800.152(8) defines a "party" as the person or entity with the right to participate in a hearing authorized by applicable statute or rule.

Certain subsections in §800.152 have been renumbered to accommodate additions or deletions.

§800.191. Appeal

Section 800.191(b) adds that an appeal shall be in writing.

Section 800.191(c) clarifies that the Agency shall refer the request for appeal to an impartial hearing officer. The requirement of the hearing officer to receive oral and written evidence and to prepare a written proposal for a decision to be submitted to the executive director for a final decision is removed and relocated in new §800.197.

Section 800.191(d) states that the decision of the Agency's executive director shall be final. This requirement is removed and relocated in new §800.200.

New §800.191(d) provides that the Agency shall mail a written notice of hearing to the Board (and its representative, if any), which contains:

(1) the date, time, place, and nature of the hearing;

(2) the legal authority under which the hearing is to be held; and

(3) a brief summary of the issues to be considered during the hearing.

§800.192. Hearing Procedures

New §800.192 sets forth procedures for conducting Board sanction hearings.

Section 800.192(a) provides that the hearing must be held in person in Austin, Texas, unless the parties agree to a telephonic hearing or request a different location.

Section 800.192(b) requires that the hearing be conducted informally to determine the substantial rights of the parties. This subsection also states that all issues relevant to the appeal must be considered and addressed, and may include:

(1) presentation of evidence;

(2) examination of witnesses and parties;

(3) additional evidence; and

(4) appropriate hearing behavior.

Section 800.192(c) states that:

(1) the hearing record must include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and physical evidence entered as exhibits;

(2) the hearing record must be maintained according to federal and state law; and

(3) the confidentiality of information contained in the hearing record must be maintained according to federal and state law.

§800.193. Postponements, Continuances, and Withdrawals

New §800.193 authorizes the hearing officer to grant a hearing postponement, continuance, or withdrawal.

Section 800.193(a) allows the hearing officer to grant a postponement of the hearing for good cause, at the party's request.

Section 800.193(b) states that a continuance may be ordered at the discretion of the hearing officer to consider additional, necessary evidence or for any other reason the hearing officer deems appropriate.

Section 800.193(c) provides that a Board may withdraw an appeal at any time prior to the issuance of the final decision.

§800.194. Evidence

New §800.194 sets forth the evidence procedures for hearings.

Section 800.194(a), Evidence Generally, provides that evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

Section 800.194(b), Exchange of Exhibits, states that any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties with a copy given to the hearing officer in advance of the hearing. Any documentary evidence to be presented at an in-person hearing shall be exchanged at the hearing.

Section 800.194(c), Stipulations, states that parties, with the consent of the hearing officer, may agree in writing to relevant facts. The hearing officer may decide the appeal on the basis of such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.

Section 800.194(d), Experts and Evaluations, states that if relevant and useful--testimony from an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency may be ordered by the hearing officers, on their own motion, or at a party's request. Any such expert or evaluation shall be at the expense of one of the parties.

Section 800.194(e), Subpoenas, states that:

(1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.

(2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.

(3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.

(4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.

§800.195. Hearing Officer Independence and Impartiality

New §800.195 relates to the Agency's hearing officers' powers and impartiality and the grounds and process for the disqualification and withdrawal of hearing officers.

Section 800.195(a) provides that a hearing officer has all necessary powers to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding handling of any issues during the pendency of a case and in issuing their written proposals for decisions.

Section 800.195(b) specifies that a hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.

Section 800.195(c) allows the hearing officer to withdraw from a hearing to avoid the appearance of impropriety or partiality.

Section 800.195(d) provides that upon disqualification or withdrawal, the Agency shall assign an alternate hearing officer to the case. This alternate hearing officer is not bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.

§800.196. Ex Parte Communications

New §800.196 is intended to prevent improper communication with hearing officers and to ensure that their decisions are based solely on the evidence and arguments presented at the hearing. The section states that:

(a) The hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte communications with the hearing officer on behalf of any interested person or party.

(b) If the hearing officer receives any such ex parte communication, the other parties shall be given an opportunity to review that communication.

(c) Nothing shall prevent the hearing officer from communicating with parties or their representatives about routine matters such as requests for continuances or opportunities to inspect the file.

(d) The hearing officer may initiate communications with an Agency employee who has not participated in a hearing or any determination in the case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

§800.197. Hearing Decision

New §800.197 sets out the Agency's procedures related to the preparation of a written proposal for a decision.

Section 800.197(a) requires the hearing officer to promptly prepare a written proposal for decision following the conclusion of the hearing.

Section 800.197(b) provides that the proposal for decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing and state:

(1) a list of individuals who appeared at the hearing;

(2) the findings of fact and conclusions of law reached on the issues; and

(3) the affirmation, reversal, or modification of the sanctions.

Section 800.197(c) provides that the proposal for decision shall be submitted to the Agency's executive director for issuance of a written decision on behalf of the Agency.

Section 800.197(d) provides that unless a party files a timely motion for rehearing, the Agency may assume continuing jurisdic-

tion to modify or correct a decision until the expiration of 30 calendar days from the mailing date of the decision.

§800.198. Motion for Reopening

New §800.198 sets forth the procedures for requesting a reopening of a hearing if a party is not able to participate in a hearing.

Section 800.198(a) provides that a party who fails to appear at a hearing may request to reopen the hearing within 30 calendar days from the date the decision is mailed.

Section 800.198(b) states that the motion for reopening must be in writing and detail the reason for failing to appear at the hearing.

Section 800.198(c) provides that the hearing officer may schedule a hearing to consider granting the motion for reopening.

Section 800.198(d) allows that if the hearing officer determines the party has shown good cause for failing to appear, the hearing officer may grant the motion.

§800.199. Motion for Rehearing

New §800.199 sets forth the Agency's procedures for requesting a rehearing and the conditions under which a rehearing may be granted.

Section 800.199(a) provides that a Board may file a motion for rehearing within 30 days from the date the decision is mailed. A rehearing shall be granted only for the presentation of new evidence.

Section 800.199(b) requires that a motion for rehearing be in writing and set forth the new evidence for consideration.

Section 800.199(c) states that if the hearing officer determines a rehearing is warranted, it shall be scheduled at a reasonable time and place.

Section 800.199(d) requires the hearing officer to issue a written proposal for decision in response to a timely filed motion for rehearing. The proposal for decision shall be submitted to the Agency's executive director for issuance of a final decision.

§800.200. Finality of Decision

New §800.200 sets forth the conditions under which the Agency's decision is finalized.

Section 800.200(a) states that the decision of the executive director is the final administrative decision of the Agency after the expiration of 30 calendar days from the mailing date of the decision unless within that time:

(1) a request for reopening is filed with the Agency;

(2) a request for rehearing is filed with the Agency; or

(3) the Agency assumes continuing jurisdiction to modify or correct the decision.

Section 800.200(b) provides that any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency shall be final on the expiration of 30 calendar days from the mailing date of the decision, modification, or correction.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to clarify the process for appealing Board sanction determinations and to ensure that such appeals satisfy procedural due process requirements.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Human Resources Code §44.002, regarding Administrative Rules.

The rules will affect Texas Labor Code, Title 4, particularly Chapter 301 and 302, as well as Texas Government Code, Chapter 2308.

§800.152. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Corrective Action Plan--A plan developed and imposed by the Agency that requires a Board or other entity to take Agency-identified actions within a specified time frame designed to correct specific instances of noncompliance or other failures.

(2) Hearing--An informal, orderly, and readily available proceeding held before an impartial hearing officer at which a party or hearing representative may present evidence to show that the Agency's determination of sanctions shall be reversed, affirmed, or modified.

(3) Hearing officer--An Agency employee designated to conduct hearings and issue proposals for decision.

(4) Hearing representative--Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

(5) [~~(2)~~] Level One Sanction Status--A sanction status assigned by the Agency to a Board or other subrecipient of the Agency for significant inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A Level One Sanction Status may be associated with the assessment of one or more penalties as referenced in this subchapter.

(6) [~~(3)~~] Level Two Sanction Status--A higher sanction status than Level One assigned by the Agency to a Board or other subrecipient of the Agency for severe inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A Level Two sanction may be associated with the assessment of more severe penalties than those assessed to a Board or subrecipient of the Agency in Level One Sanction Status.

(7) [~~(4)~~] Level Three Sanction Status--The highest sanction status assigned by the Agency to a Board or other subrecipient of the Agency for extreme inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A Level Three Sanction[~~level three sanction~~] may be associated with the assessment of the most severe penalties being assessed against the Board or subrecipient of the Agency.

(8) Party--The person or entity with the right to participate in a hearing authorized by applicable statute or rule.

§800.191. Appeal.

(a) A Board may appeal a Sanction Determination; however, a recommendation to another entity by the Agency or Commission under §800.174 and §800.175 of this chapter, may not be appealed under this section.

(b) A request for appeal of a [~~Notice of~~] Sanction Determination [~~(Sanction Determination)~~] shall be filed [~~submitted~~] within 10 [~~ten~~] working days following the receipt of the Sanction Determination. The appeal shall[~~must~~] be in writing and filed with [~~submitted to~~] the General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas 78778.

(c) The Agency shall refer the request for appeal to an impartial[~~a~~] hearing officer for a hearing. [~~The hearing officer shall receive oral and written evidence, as deemed appropriate by the hearing officer, from both parties and prepare a written proposal for decision to be submitted to the Agency's Executive Director for final decision.~~]

(d) The Agency shall mail a notice of hearing to the Board as provided in §800.181(c) and to its representative, if any. The notice of hearing shall be in writing and include:

(1) a statement of the date, time, place, and nature of the hearing;

(2) a statement of the legal authority under which the hearing is to be held; and

(3) a short and plain statement of the issues to be considered during the hearing.

[~~(d) The decision of the Agency's Executive Director shall be final.~~]

§800.192. Hearing Procedures.

(a) The sanction determination hearing shall be conducted in person in Austin, Texas, unless the parties agree to a telephonic hearing or request a different location.

(b) The hearing shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and addressed, and may include:

(1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing.

(2) Examination of Parties and Witnesses. The hearing officer shall examine parties and any witnesses, and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.

(3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence as deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.

(4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual, including a party, who fails to correct behavior the hearing officer identifies as disruptive. After expulsion, the hearing officer may proceed with the hearing and render a decision.

(c) Records.

(1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.

(2) The hearing record shall be maintained in accordance with federal and state law.

(3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.

§800.193. Postponements, Continuances, and Withdrawals.

(a) The hearing officer may grant a postponement of a sanction determination hearing for good cause at a party's request.

(b) A continuance of a hearing may be ordered at the discretion of the hearing officer to consider additional, necessary evidence or for any other reason the hearing officer deems appropriate.

(c) A Board may withdraw an appeal at any time prior to the issuance of the final decision.

§800.194. Evidence.

(a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Exchange of Exhibits. Any documentary evidence to be presented during a telephonic hearing shall be exchanged with all par-

ties and a copy shall be provided to the hearing officer in advance of the hearing. Any documentary evidence to be presented at an in-person hearing shall be exchanged at the hearing.

(c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to relevant facts. The hearing officer may decide the appeal based on such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.

(d) Experts and Evaluations. If relevant and useful, testimony from an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency may be ordered by hearing officers, on their own motion, or at a party's request. Any such expert or evaluation shall be at the expense of one or more of the parties.

(e) Subpoenas.

(1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.

(2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.

(3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.

(4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.

§800.195. Hearing Officer Independence and Impartiality.

(a) A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding the handling of any issues during the pendency of a case and in issuing their written proposals for decision.

(b) A hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.

(c) The hearing officer may withdraw from a hearing to avoid the appearance of impropriety or partiality.

(d) Following any disqualification or withdrawal of a hearing officer, the Agency shall assign an alternate hearing officer to the case. The alternate hearing officer shall not be bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.

§800.196. Ex Parte Communications.

(a) The hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte communications with the hearing officer on behalf of any interested person or party.

(b) If the hearing officer receives any such ex parte communication, the other parties shall be given an opportunity to review any such ex parte communication.

(c) Nothing shall prevent the hearing officer from communicating with parties or their representatives about routine matters such as requests for continuances or opportunities to inspect the file.

(d) The hearing officer may initiate communications with an Agency employee who has not participated in a hearing or any determination in the case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

§800.197. Hearing Decision.

(a) Following the conclusion of the hearing, the hearing officer shall promptly prepare a written proposal for decision.

(b) The proposal for decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing. The decision shall include:

(1) a list of the individuals who appeared at the hearing;

(2) the findings of fact and conclusions of law reached on the issues; and

(3) the affirmation, reversal, or modification of the sanctions.

(c) The proposal for decision shall be submitted to the Agency's executive director for issuance of a written decision on behalf of the Agency.

(d) Unless a party files a timely motion for rehearing, the Agency may assume continuing jurisdiction to modify or correct a decision until the expiration of 30 calendar days from the mailing date of the decision.

§800.198. Motion for Reopening.

(a) If a party does not appear for a hearing, the party may request a reopening of the hearing within 30 calendar days from the date the decision is mailed.

(b) The motion for reopening shall be in writing and detail the reason for failing to appear at the hearing.

(c) The hearing officer may schedule a hearing on whether to grant the reopening.

(d) The motion may be granted if the hearing officer determines that the party has shown good cause for failing to appear at the hearing.

§800.199. Motion for Rehearing.

(a) A Board may file a motion for rehearing for the presentation of new evidence within 30 days from the date the decision is mailed. A rehearing shall be granted only for the presentation of new evidence.

(b) A motion for rehearing shall be in writing and allege the new evidence to be considered.

(c) If the hearing officer determines that the alleged new evidence warrants a rehearing, a rehearing shall be scheduled at a reasonable time and place.

(d) The hearing officer shall issue a written proposal for decision in response to a timely filed motion for rehearing. The proposal for decision shall be submitted to the Agency's executive director for issuance of a final decision.

§800.200. Finality of Decision.

(a) The decision of the executive director is the final administrative decision of the Agency after the expiration of 30 calendar days from the mailing date of the decision, unless within that time:

(1) a request for reopening is filed with the Agency;

(2) a request for rehearing is filed with the Agency; or

(3) the Agency assumes continuing jurisdiction to modify or correct the decision.

(b) Any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency shall be final on the expiration of 30 calendar days from the mailing date of the decision, modification, or correction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702700
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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CHAPTER 807. CAREER SCHOOLS AND COLLEGES

SUBCHAPTER T. CAREER SCHOOLS HEARINGS

40 TAC §§807.381 - 807.395

The Texas Workforce Commission (Commission) proposes new Subchapter T, relating to Career Schools and Colleges, as follows:

Subchapter T, Career Schools Hearings, §§807.381 - 807.395

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed rule change is to set forth procedures for the appeal and hearing process for those entities and individuals subject to regulation by the Commission under Chapter 132 of the Texas Education Code. Under a separate, but concurrent, rulemaking proposal, the Commission is proposing the repeal of Chapter 823, General Hearings rules, containing the hearings and appeals process for career schools and colleges, which has been modified and incorporated into Chapter 807.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

The Commission proposes new Subchapter T, Career Schools Hearings, as follows:

§807.381. Purpose

Section 807.381 states that the purpose of Subchapter T is to set out the hearings process as authorized by Agency rules and Chapter 132 of the Texas Education Code.

§807.382. Definitions

Section 807.382 adds definitions, retained with minor modifications from the concurrent repeal of Chapter 823, which are referenced throughout Subchapter T.

Section 807.382(1) defines "appellant" as a party or the party's authorized hearing representative who files an appeal from an appealable determination or decision.

Section 807.382(2) defines "date of notice" as the date the notice is received--unless good cause exists for the hearing officer to determine otherwise.

Section 807.382(3) defines "date of request of hearing" as the date on which the appellant or the hearing representative filed a written notice of appeal with the Agency by hand delivery, facsimile, or mail. If an appeal is mailed to the Agency, it is completed as of the postmark date on the envelope containing the appeal request, unless good cause exists for the hearing officer to determine otherwise. If an appeal is hand delivered or faxed after 5 p.m., the date of request must be the following day.

Section 807.382(4) defines "hearing" as an informal, orderly, and readily available proceeding held before an impartial hearing officer. A party or hearing representative may present evidence to show that the Agency's determination should be reversed, affirmed, or modified.

Section 807.382(5) defines "hearing officer" as an Agency employee designated to conduct impartial hearings and issue final administrative decisions.

Section 807.382(6) defines "hearing representative" as any individual authorized by a party to assist in presenting the party's appeal, including legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

Section 807.382(7) defines "party" as the person or entity with the right to participate in a hearing authorized in applicable statute or rule.

§807.383. Information on Right of Appeal

Section 807.383 sets forth that an issuer of a determination shall inform the career school applicant or any party directly aggrieved by the determination of the right to a hearing. The notice shall explain the procedure for an appeal, the applicant's or party's right of appeal, and the right to be represented by others, including legal counsel.

§807.384. Request for Hearing

Section 807.384 sets forth procedures for requesting a hearing.

Section 807.384(a) provides that the party seeking review of a determination under this subchapter relating to career school hearings shall request a hearing in writing within 15 days after receipt of notice of the determination.

Section 807.384(b) states that the request shall be addressed as provided in the determination, state the nature of the determination, the name and identifying information of the requesting party, and a request that the determination be reviewed.

Section 807.384(c) specifies that the request may include an explanation of why the determination should be changed, although this is not a jurisdictional requirement.

§807.385. Setting of Hearing

Section 807.385 sets forth the Agency requirements for setting a hearing.

Section 807.385(a) states that upon receipt of the request for a hearing, the Agency shall promptly mail a notice of hearing that sets the hearing for a reasonable time and place within 30 days from the receipt of the request.

Section 807.385(b) requires that the notice of hearing be in writing and include:

(1) a statement of the date, time, place, and nature of the hearing;

(2) a statement of the legal authority under which the hearing will be held; and

(3) a short and plain statement of the issues that will be considered during the hearing.

Section 807.385(c) requires that the notice of hearing be issued at least 10 days before the date of the hearing unless a shorter period is permitted by statute.

Section 807.385(d) provides that the hearing notice shall state whether the hearing will be conducted by telephone or in-person. The notice also shall identify the location of an in-person hearing.

Section 807.385(e) specifies that parties needing special accommodations, including a bilingual or sign language interpreter, may request such before the setting of the hearing, if possible, or as soon as practical.

§807.386. Hearing Officer Independence and Impartiality

Section 807.386 sets out the powers and independence of hearing officers and the grounds and process for the disqualification and withdrawal of hearing officers.

Section 807.386(a) provides that a hearing officer has all necessary powers to conduct a full, fair, and impartial hearing. Hearing officers are to remain independent and impartial in all matters relating to active cases and in issuing their decisions.

Section 807.386(b) specifies that a hearing officer shall be disqualified if he or she has a personal interest in the outcome of the appeal or directly or indirectly participated in the determination on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.

Section 807.386(c) allows the hearing officer to withdraw from a hearing to avoid the appearance of impropriety or partiality.

Section 807.386(d) provides that upon disqualification or withdrawal, the Agency shall assign an alternate hearing officer. This alternate hearing officer is not bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.

§807.387. Hearing Procedures

Section 807.387 sets out the general procedures for a hearing.

Section 807.387(a) specifies that hearings shall be conducted in person in Austin, Texas, unless the parties agree to a telephonic hearing or request a different location.

Section 807.387(b)(1) - (4) specifies that all hearings shall be conducted informally and in such a manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and addressed, and may include:

(1) presentation of evidence;

(2) examination of parties and witnesses;

(3) additional evidence; and

(4) appropriate hearing behavior.

Section 807.387(c)(1) - (3), Records, states that:

(1) the hearing record shall include the audio recording of the proceedings and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits;

(2) the hearing record shall be maintained in accordance with federal and state law; and

(3) confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.

§807.388. Postponements, Continuances, and Withdrawals

Section 807.388 authorizes the hearing officer to grant a postponement, continuance, or withdrawal.

Section 807.388(a) allows the hearing officer to grant a postponement of a hearing for good cause at a party's request.

Section 807.388(b) states that a continuance may be ordered at the discretion of the hearing officer in order to consider additional, necessary evidence or for any other reason deemed appropriate by the hearing officer.

Section 807.388(c) provides that a party may withdraw its appeal at any time before the final decision is issued.

§807.389. Evidence

Section 807.389 sets forth the evidence procedures for hearings.

Section 807.389(a), Evidence Generally, provides the standard for the admissibility of evidence, specifying that hearsay evidence may be admitted. However, the hearing officer has the authority to exclude relevant evidence to ensure fairness or to prevent undue delay, waste of time, or needless presentation of cumulative evidence.

Section 807.389(b), Exchange of Exhibits, states that any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties with a copy given to the hearing officer in advance of the hearing. Documentary evidence to be presented at an in-person hearing shall be exchanged at the hearing.

Section 807.389(c), Stipulations, states that parties to an appeal, with the consent of the hearing officer, may agree in writing to the relevant facts involved. The hearing officer may decide the appeal based on such stipulation or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence deemed necessary.

Section 807.389(d), Experts and Evaluations, allows the hearing officer to order--or a party may request, if relevant and useful--an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency. Such expert or evaluation shall be at the expense of the party(ies).

Section 807.389(e), Subpoenas, provides that:

(1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.

(2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.

(3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.

(4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.

§807.390. Ex Parte Communications

Section 807.390(a) provides that the hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte communications with the hearing officer on behalf of any interested person or party.

Section 807.390(b) provides that if any such ex parte communication is received, the other parties should be given the opportunity to review the ex parte communication.

Section 807.390(c) specifies that hearing officers may communicate with parties or representatives about procedural matters.

Section 807.390(d) provides that a hearing officer may communicate with Agency personnel who are not otherwise involved in a case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

§807.391. Change in Determination

Section 807.391 sets out that the original issuer of the determination, which a party has appealed, may change the determination that is the basis of the appeal at any time up to the issuance of a decision by the hearing officer.

§807.392. Hearing Decision

Section 807.392 sets forth the time frame for and the content of a decision issued by a hearing officer under this subchapter.

Section 807.392(a) requires the hearing officer to prepare a written decision promptly after the hearing ends on behalf of the Agency.

Section 807.392(b)(1) - (3) provides that the decision shall be based exclusively on the evidence of record in the hearing and matters officially noticed in the hearing, and shall include:

(1) a list of the individuals who appeared at the hearing;

(2) the findings of fact and conclusions of law reached on the issues; and

(3) the affirmation, reversal, or modification of the determination.

Section 807.392(c) states that unless a party files a timely motion for a rehearing, the Agency may assume continuing jurisdiction to modify or correct a hearing decision until the expiration of 30 calendar days from the mailing date of the hearing decision.

§807.393. Motion for Reopening

Section 807.393 sets forth the time frame and requirements for a motion for the reopening of a hearing.

Section 807.393(a) provides that if a party does not appear for a hearing, the party may request the reopening of the hearing within 30 calendar days from the date the decision is mailed.

Section 807.393(b) states that the motion shall be in writing and detail the reason for failing to appear at the hearing.

Section 807.393(c) provides that the Agency may schedule a hearing on whether to grant the reopening.

Section 807.393(d) allows that a motion may be granted if the hearing officer determines that the party has shown good cause for failing to appear at the hearing.

§807.394. Motion for Rehearing

Section 807.394 sets forth the time frame and requirements for a motion for rehearing.

Section 807.394(a) states that a party has 30 calendar days from the date the decision is mailed to file a motion for rehearing. A rehearing may be granted only for the presentation of new evidence.

Section 807.394(b) requires that a motion for rehearing be in writing and allege the new evidence to be considered. The party must show a compelling reason why the evidence was not presented at the hearing.

Section 807.394(c) states that if the hearing officer determines that the alleged, new evidence warrants a rehearing, a hearing shall be scheduled at a reasonable time and place.

Section 807.394(d) requires that the hearing officer issue a written decision in response to a timely filed motion for rehearing.

Section 807.394(e) states that the Agency may assume continuing jurisdiction to modify, correct, or reform a decision until the expiration of 30 calendar days from the mailing date of the hearing decision.

§807.395. Finality of Decision

Section 807.395 sets forth the conditions under which the decision of the hearing officer is the final decision of the Agency, and gives the Agency the discretion to assume continuing jurisdiction.

Section 807.395(a) states that the decision of the hearing officer becomes the final decision of the Agency after the expiration of 30 calendar days from the mailing date of the decision unless within that time:

(1) a request for reopening is filed with the Agency;

(2) a request for rehearing is filed with the Agency; or

(3) the Agency assumes continuing jurisdiction to modify or correct the decision.

Section 807.395(b) provides that any decision issued in response to a request for a reopening or rehearing or a modification or correction issued by the Agency shall be final on the expiration of 30 calendar days from the mailing date of the decision, modification, or correction.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to clarify the hearing process for career schools, career school applicants, and individuals subject to Chapter 132 of the Texas Education Code.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.381. Purpose.

This subchapter provides a hearing process to the extent authorized by Chapter 132 of the Texas Education Code and the rules administered by the Agency.

§807.382. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Appellant--The party or the party's authorized hearing representative who files an appeal from an appealable determination or decision.

(2) Date of notice--The date the notice is received, unless good cause exists for the hearing officer to determine otherwise.

(3) Date of request of hearing--The date on which the appellant or the hearing representative filed a written notice of appeal with the Agency by hand delivery, facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as of the postmark date on the envelope containing the appeal request unless good cause exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or facsimile after 5 p.m., the date of request shall be the next day.

(4) Hearing--An informal, orderly, and readily available proceeding held before an impartial hearing officer. A party or hearing representative may present evidence to show that the Agency's determination should be reversed, affirmed, or modified.

(5) Hearing officer--An Agency employee designated to conduct impartial hearings and issue final administrative decisions.

(6) Hearing representative--Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

(7) Party--The person or entity with the right to participate in a hearing authorized in applicable statute or rule.

§807.383. Information on Right of Appeal.

An issuer of a determination shall inform the career school applicant or any party directly aggrieved by the determination of the right to a hearing. The notice shall explain the procedure for an appeal, the party's right of appeal, and the right to be represented by others, including legal counsel.

§807.384. Request for Hearing.

(a) The party seeking review of a determination under this subchapter relating to career schools hearings shall request a hearing in writing within 15 days after receipt of the notice of determination.

(b) The request shall be addressed as provided in the determination and state the nature of the determination, the name and identifying information of the requesting party, and a request that the determination be reviewed.

(c) The request may include an explanation of why the determination should be changed; however, this is not a jurisdictional requirement.

§807.385. Setting of Hearing.

(a) Upon receipt of request for a hearing, the Agency shall promptly mail a notice of hearing that sets the hearing for a reasonable time and place within 30 days from receipt of the request for a hearing.

(b) The notice of hearing shall be in writing and include a:

(1) statement of the date, time, place, and nature of the hearing;

(2) statement of the legal authority under which the hearing is to be held; and

(3) short and plain statement of the issues to be considered during the hearing.

(c) The notice of hearing shall be issued at least 10 days before the date of the hearing unless a shorter period is permitted by statute.

(d) The hearing notice shall state whether the hearing shall be conducted by telephone or in-person. The hearing notice shall also include the location of an in-person hearing.

(e) Parties needing special accommodations, including a bilingual or sign language interpreter, may request such before the setting of the hearing, if possible, or as soon as practical.

§807.386. Hearing Officer Independence and Impartiality.

(a) A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding the handling of any issues during the pendency of a case and in issuing their written decisions.

(b) A hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.

(c) The hearing officer may withdraw from a hearing to avoid the appearance of impropriety or partiality.

(d) Following any disqualification or withdrawal of a hearing officer, the Agency shall assign an alternate hearing officer to the case. The alternate hearing officer shall not be bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.

§807.387. Hearing Procedures.

(a) The hearing shall be conducted in person in Austin, Texas, unless the parties agree to a telephonic hearing or request a different location.

(b) The hearing shall be conducted informally and in such a manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and addressed, and may include:

(1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing.

(2) Examination of Parties and Witnesses. The hearing officer shall examine parties and any witnesses and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.

(3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence as deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.

(4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual or party who fails to correct behavior the hearing officer identifies as disruptive. After expulsion, the hearing officer may proceed with the hearing and render a decision.

(c) Records

(1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.

(2) The hearing record shall be maintained in accordance with federal and state law.

(3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.

§807.388. Postponements, Continuances, and Withdrawals.

(a) The hearing officer may grant a postponement of a hearing for good cause at a party's request.

(b) A continuance of a hearing may be ordered at the discretion of the hearing officer in order to consider additional, necessary evidence or for any other reason the hearing officer deems appropriate.

(c) A party may withdraw an appeal at any time prior to the issuance of the final decision.

§807.389. Evidence.

(a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Exchange of Exhibits. Any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties and a copy shall be provided to the hearing officer in advance of the hearing. Any documentary evidence to be presented at an in-person hearing shall be exchanged at the hearing.

(c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to relevant facts. The hearing officer may decide the appeal based on such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.

(d) Experts and Evaluations. If relevant and useful, testimony from an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency may be ordered by hearing officers, on their own motion or at a party's request. Any such expert or evaluation shall be at the expense of one or more of the parties.

(e) Subpoenas.

(1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.

(2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.

(3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.

(4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.

§807.390. Ex Parte Communications.

(a) The hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte communications with the hearing officer on behalf of any interested person or party.

(b) If the hearing officer receives any such ex parte communication, the other parties shall be given an opportunity to review any such ex parte communication.

(c) Nothing shall prevent the hearing officer from communicating with parties or their representatives about routine matters such as requests for continuances or opportunities to inspect the file.

(d) The hearing officer may initiate communications with an Agency employee who has not participated in a hearing or any determination in the case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

§807.391. Change in Determination.

The issuer of the determination may change the determination any time before the hearing officer issues the decision. Despite the issuer changing the determination, the parties may proceed with the hearing.

§807.392. Hearing Decision.

(a) Following the conclusion of the hearing, the hearing officer shall promptly prepare a written decision on behalf of the Agency.

(b) The decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing. The decision shall include:

(1) a list of the individuals who appeared at the hearing;

(2) the findings of fact and conclusions of law reached on the issues; and

(3) the affirmation, reversal, or modification of the determination.

(c) Unless a party files a timely motion for rehearing, the Agency may assume continuing jurisdiction to modify or correct a hearing decision until the expiration of 30 calendar days from the mailing date of the hearing decision.

§807.393. Motion for Reopening.

(a) If a party does not appear for a hearing, the party may request the reopening of the hearing within 30 calendar days from the date the decision is mailed.

(b) The motion for reopening shall be in writing and detail the reason for failing to appear at the hearing.

(c) The Agency may schedule a hearing on whether to grant the reopening.

(d) The motion may be granted if the hearing officer determines that the party has shown good cause for failing to appear at the hearing.

§807.394. Motion for Rehearing.

(a) A party has 30 calendar days from the date the decision is mailed to file a motion for rehearing. A rehearing shall be granted only for the presentation of new evidence.

(b) A motion for rehearing shall be in writing and allege the new evidence to be considered. The party shall show a compelling reason why this evidence was not presented at the hearing.

(c) If the hearing officer determines that the alleged, new evidence warrants a rehearing, a hearing shall be scheduled at a reasonable time and place.

(d) The hearing officer shall issue a written decision in response to a timely filed motion for rehearing.

(e) The Agency may assume continuing jurisdiction to modify, correct, or reform a decision until the expiration of 30 calendar days from the date of mailing of the hearing decision.

§807.395. Finality of Decision.

(a) The decision of the hearing officer is the final decision of the Agency after the expiration of 30 calendar days from the mailing date of the decision unless within that time:

(1) a request for reopening is filed with the Agency;

(2) a request for rehearing is filed with the Agency; or

(3) the Agency assumes continuing jurisdiction to modify or correct the decision.

(b) Any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency shall be final on the expiration of 30 calendar days from the mailing date of the decision, modification, or correction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702701

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Earliest possible date of adoption: August 12, 2007

For further information, please call: (512) 475-0829

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CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (Commission) proposes to amend the following section of Chapter 809 relating to Child Care Services:

Subchapter D. Parent Rights and Responsibilities, §809.74

The Commission proposes the repeal of the following subchapter to Chapter 809 relating to Child Care Services in its entirety:

Subchapter G. Appeal Procedures

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed rule change is to establish detailed and consistent procedures for complaints, hearings, and appeals related to workforce services administered by Local Workforce Development Boards (Boards). Texas Labor Code, §302.065, directs the Commission to integrate the administration of four federal block grant programs with the goal of streamlining the delivery of services provided in the local career development one-stops. The Commission expanded this integration to state-funded workforce services, including examining the existing complaints and appeals processes for workforce services administered by the Boards. An absence of unified and integrated rules on complaints, hearings, and appeals related to workforce services makes the existing rules difficult to understand or interpret consistently and works as a barrier to integrating workforce services.

To maintain uniformity and consistency across all Board-administered workforce services and to protect due process rights of Texas Workforce Center customers, in a separate but concurrent, rulemaking proposal, the Commission is proposing the repeal of Chapter 823, General Hearings rules, and is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals rules. New Chapter 823 requires Boards to establish local policies for filing complaints, to provide opportunities for informal resolutions, and to establish procedures for Board hearings and appeals.

The Commission has reviewed sections of Chapter 809 relating to complaints or grievances, local-level appeals, and state-level hearings. The Commission proposes to repeal these sections and incorporate similar processes related to complaints, hearings, and appeals in new Chapter 823.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission proposes amendments to Subchapter D, as follows:

§809.74. Parent Appeal Rights

Under a separate but concurrent rulemaking proposal, the Commission is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals, which comprises the complaint, hearing, and appeal procedures for all Board-administered workforce services, including appeal procedures set forth in Subchapter G of this chapter. Therefore, references to "Subchapter G of this chapter" contained in §809.74(a), (c), (d), and (e) are removed and replaced by references to "Chapter 823 of this title."

SUBCHAPTER G. APPEAL PROCEDURES

The Commission proposes the repeal of Subchapter G, as follows:

Under a separate but concurrent, rulemaking proposal, the Commission is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals, which comprises the complaint, hearing, and appeal procedures for all Board-administered workforce services, including the information in the following sections.

§809.131. Board Review

Section 809.131 is repealed and the information is relocated in new Chapter 823.

§809.132. Appeals to the Commission

Section 809.132 is repealed and the information is relocated in new Chapter 823.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that, for each year of the first five years the proposed rule amendments will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that, for each of the first five years the proposed rule amendments are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide a unified and streamlined process regarding the resolution of complaints, hearings, and appeals related to Board-administered workforce services. In addition, due process principles and other legal rights will be protected, program outcomes will be achieved more effectively, and workforce services will be further integrated.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §809.74

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide the Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities and the Texas Human Resources Code, §44.002, regarding Administrative Rules.

The proposed rules will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.74. Parent Appeal Rights.

(a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Chapter 823 of this title,[~~Subchapter G of this chapter (relating to Appeal Procedure)~~] if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the Board's child care contractor.

(b) A parent may have an individual represent him or her[~~them~~] during this process.

(c) A parent of a child in protective services may not appeal pursuant to Chapter 823 of this title[~~Subchapter G of this chapter~~], but shall follow the procedures established by DFPS.

(d) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by a Choices caseworker, the parent may [~~not~~] appeal pursuant to Chapter 823 of this title.[~~Subchapter G of this chapter, but may appeal following the procedures in Chapter 811 of this title.~~]

(e) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by an FSE&T caseworker, the parent may [~~not~~] appeal pursuant to Chapter 823 of this title.[~~Subchapter G of this chapter, but may appeal following the procedures in Chapter 813 of this title.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702702

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Earliest possible date of adoption: August 12, 2007

For further information, please call: (512) 475-0829

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SUBCHAPTER G. APPEAL PROCEDURES

40 TAC §809.131, §809.132

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code. §301.0015 and §302.002(d), which provide the Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code, §44.002, regarding Administrative Rules.

The repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.131. Board Review.

§809.132. Appeals to the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702703

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Earliest possible date of adoption: August 12, 2007

For further information, please call: (512) 475-0829

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CHAPTER 811. CHOICES

SUBCHAPTER F. APPEALS

40 TAC §§811.71 - 811.73

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Workforce Commission (Commission) proposes the repeal of the following subchapter of Chapter 811, relating to Choices, in its entirety:

Subchapter F, Appeals, §§811.71 - 811.73

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed rule change is to establish detailed and consistent procedures for complaints, hearings, and appeals related to workforce services administered by Local Workforce Development Boards (Boards). Texas Labor Code §302.065 requires that the Commission integrate the administration of multiple federal block grant programs and identify policy changes that support this integration. The Commission expanded this integration to state-funded workforce services, including examining the existing complaints and appeals processes for workforce services administered by the Boards. An absence of unified and integrated rules on complaints, hearings, and appeals related to workforce services makes the existing rules difficult to understand or interpret consistently and works as a barrier to integrating workforce services.

To maintain uniformity and consistency across all Board-administered workforce services and to protect due process rights of Texas Workforce Center customers, in a separate, but concurrent, rulemaking, the Commission is proposing the repeal of Chapter 823, General Hearings rules, and is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals rules. New Chapter 823 requires Boards to establish local policies related to filing complaints, to provide opportunities for informal resolutions, and to establish procedures for Board hearings and appeals.

The Commission has reviewed sections of Chapter 811 relating to complaints or grievances, local-level appeals, and state-level hearings. The Commission proposes to repeal these sections and incorporate similar processes related to complaints, hearings, and appeals in new Chapter 823.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER F. APPEALS

The Commission proposes the repeal of Subchapter F, as follows:

Under a separate, but concurrent, rulemaking proposal, the Commission is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals, which comprises the complaint, hearing, and appeal procedures for all Board-administered workforce services, including the information in the following sections.

§811.71. Board Review

Section 811.71 is repealed and the information is relocated in new Chapter 823.

§811.72. Appeals to the Commission

Section 811.72 is repealed and the information is relocated in new Chapter 823.

§811.73. Appeals to the Texas Department of Human Services (TDHS)

Section 811.73 is repealed and the information is relocated in new Chapter 823.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide a unified and streamlined process regarding the resolution of complaints, hearings, and appeals related to Board-administered services. In addition, due process principles and other legal rights will be protected, program outcomes will be achieved more effectively, and workforce services will be further integrated.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code, Chapters 31 and 34.

The proposed repeals affect Texas Labor Code, Title 4, and Texas Human Resources Code, Chapters 31 and 34.

§811.71. Board Review.

§811.72. Appeals to the Agency.

§811.73. Appeals to the Texas Department of Human Services (TDHS).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702705

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Earliest possible date of adoption: August 12, 2007

For further information, please call: (512) 475-0829

CHAPTER 813. FOOD STAMP EMPLOYMENT AND TRAINING

SUBCHAPTER F. COMPLAINTS AND APPEALS

40 TAC §813.51, §813.52

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Workforce Commission (Commission) proposes the repeal of the following sections of Chapter 813 relating to Food Stamp Employment and Training:

Subchapter F, Complaints and Appeals, §813.51 and §813.52

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed rule change is to establish detailed and consistent procedures for complaints, hearings, and appeals related to workforce services administered by Local Workforce Development Boards (Boards). Texas Labor Code §302.065 requires that the Commission integrate the administration of multiple federal block grant programs and identify policy changes that support this integration. The Commission expanded this integration to state-funded workforce services, including examining the existing complaints and appeals processes for workforce services administered by the Boards. An absence of unified and integrated rules on complaints, hearings, and appeals related to workforce services makes the existing rules difficult to understand or interpret consistently and works as a barrier to integrating workforce services.

To maintain uniformity and consistency across all Board-administered workforce services and to protect due process rights of Texas Workforce Center customers, in a separate, but concurrent, rulemaking proposal, the Commission is proposing the repeal of Chapter 823, General Hearings rules, and is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals rules. New Chapter 823 requires Boards to establish local policies for filing complaints, to provide opportunities for informal resolutions, and to establish procedures for Board hearings and appeals.

The Commission has reviewed sections of Chapter 813 relating to complaints or grievances, local-level appeals, and state-level hearings. The Commission proposes to repeal these sections and incorporate similar processes related to complaints, hearings, and appeals in new Chapter 823.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER F. COMPLAINTS AND APPEALS

The Commission proposes amendments to Subchapter F, as follows:

Under a separate, but concurrent, rulemaking proposal, the Commission is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals, which comprises the complaint, hearing, and appeal procedures for all Board-administered workforce services, including the information in the following sections.

§813.51. Appeals of Decisions Made on Food Stamp Applications and Benefits

Section 813.51 is repealed and the information is relocated in new Chapter 823.

§813.52. Appeals of E&T Activities and Support Services Decisions

Section 813.52 is repealed and the information is relocated in new Chapter 823.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide a unified and streamlined process regarding the resolution of complaints, hearings, and appeals related to Board-administered workforce services. In addition, due process principles and other legal rights will be protected, program outcomes will be achieved more effectively, and workforce services will be further integrated.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.51. Appeals of Decisions Made on Food Stamp Applications and Benefits.

§813.52. Appeals of E&T Activities and Support Services Decisions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702706

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Earliest possible date of adoption: August 12, 2007

For further information, please call: (512) 475-0829

CHAPTER 823. GENERAL HEARINGS

The Texas Workforce Commission (Commission) proposes the repeal of Chapter 823, relating to General Hearings, §§823.1 - 823.3, 823.11 - 823.15, 823.31 - 823.34, and 823.41 - 823.44 in its entirety.

The Commission proposes new Chapter 823, relating to Integrated Complaints, Hearings, and Appeals, as follows:

Subchapter A. General Provisions, §§823.1 - 823.4

Subchapter B. Board Complaint and Appeal Procedures, §§823.10 - 823.14

Subchapter C. Agency Complaint and Appeal Procedures, §§823.20 - 823.27

Subchapter D. Agency-Level Decisions, Reopenings, and Rehearings, §§823.30 - 823.33

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed repeal of Chapter 823 and proposed new Chapter 823 is to:

--establish uniform procedures and time frames;

--clarify additional Local Workforce Development Board (Board) responsibilities relating to appeals of Board decisions;

--simplify rule language and definitions;

--remove obsolete provisions; and

--promote operational efficiencies.

Texas Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency every four years. The Commission's General Hearings Rules, Chapter 823, were reviewed in 2006 with the goals of:

--promoting integrated workforce services;

--simplifying rule language;

--streamlining Board appeals processes and responsibilities;

--updating terminology and definitions; and

--removing obsolete provisions.

Texas Labor Code §302.065 directs the Commission to integrate the administration of four federal block grant programs with the goal of streamlining the delivery of services provided in the local career development one-stops. These programs include child care, Temporary Assistance for Needy Families (TANF), Food Stamp Employment and Training (FSE&T), and Workforce Investment Act (WIA). The Commission expanded this integration to include all Board-administered workforce services. Furthermore, the law directs the Commission to conduct a review of its programs, rules, policies, procedures, and organizational structure to identify specific barriers to the integration. The Commission has identified policy changes that support this integration by examining the existing complaints and appeals processes for workforce services administered by the Boards. The absence of unified and integrated rules on complaints, hearings, and appeals related to workforce services makes the existing rules difficult to understand or to interpret consistently and works as a barrier to integrating workforce services.

Moreover, the existing rules do not fully reinforce the principles of local flexibility and, instead, shift appeals processes from the local to the state level. The Commission has identified policy changes that enhance local flexibility by vesting local Boards with responsibility to provide opportunity for informal resolution, as well as conducting hearings, as necessary. These modifications will primarily affect childcare complaints, as most Boards currently address most other complaints under WIA.

The Commission has reviewed the following rules governing complaints, hearings, and appeals for workforce services administered by the Boards:

--Child Care Services Rules: 40 TAC Chapter 809, Subchapters D and G

--Choices Rules: 40 TAC Chapter 811, Subchapter F

--Food Stamp Employment and Training Rules: 40 TAC Chapter 813, Subchapter F

--Workforce Investment Act Rules: 40 TAC Chapter 841, Subchapters C, D, and E

While the chapters are similar in scope, each one established different procedures for individuals who wish to file a complaint, with inconsistent instructions regarding filing complaints, opportunities for informal reviews, and the right to file an appeal. The lack of continuity among the chapters complicates co-enrollment and service integration. In addition, the timelines for these procedures are inconsistent across the chapters.

Additionally, the Project Reintegration of Offenders (Project RIO) rules, 40 TAC Chapter 847, do not address Board review or notice of the right to file a complaint. Therefore, the new Chapter 823 rules include processes for Board hearings and notices of the right to file a complaint under the Project RIO rules.

New Chapter 823 follows the complaints and appeals process established in WIA regulations, 20 C.F.R. §667.600 and §667.640, which provide federally mandated procedures and time frames for complaints and appeals. The WIA procedures in Chapter 841 of this title are the only rules that have federal requirements; other Board-administered workforce services are not federally guided, but instead are governed by Commission rules.

To maintain uniformity and consistency across all Board-administered workforce services and to protect due process rights, the new Chapter 823 rules require Boards to establish local policy to ensure that Texas Workforce Center customers are notified, in writing, of any adverse actions and are provided with information on appeal rights and the right to file a complaint regarding their workforce services. Boards that do not advise Texas Workforce Centers of the requirement to inform customers of their right to file a complaint or to appeal the written notice of an adverse action risk violating due process principles, which require notice of these rights.

This chapter establishes a dispute resolution process that can be started in one of two ways. The first allows a person to file an appeal following a written determination issued by a Board or its designee. If a written determination has been issued, an appeal must be filed with the Board within 14 calendar days. The other method of initiating the process is for a person to complain of alleged violations of any law, rule, or regulation relating to any federal or state-funded workforce service. If no written determination is issued regarding an adverse action or perceived violation, a person may file a complaint within 180 days of the adverse action or violation.

Under the processes set forth in this chapter, following the receipt of an appeal or a complaint at the Board level, the Board will provide an opportunity for informal resolution. In the informal resolution process, Boards will have the flexibility to utilize such diverse procedures as informal meetings with case managers, reviews of case files, conference calls, interviews, or written explanations, as appropriate for the situation. While this may represent additional responsibilities for some Boards, it is the intent and expectation of the Commission that the majority of appeals and complaints will be resolved informally in this manner, without the necessity of holding a hearing.

However, if no successful informal resolution can be reached, the Board shall hold a hearing and issue a written decision that includes information about filing an appeal with the Agency. If a Board's written decision is appealed to the Agency, an Agency hearing officer will conduct a hearing and issue a decision on behalf of the Agency. Although requiring Boards to issue written decisions may result in supplementary efforts by Boards initially, the Commission expects greater customer satisfaction at the local level and potentially system-wide savings as formal proceedings at the state level are minimized.

There also may be circumstances in which an appeal or complaint may be filed directly with the Agency. In such a case, the Agency has the discretion to refer the appeal or complaint back

to the Board, if appropriate. If an appeal is based on a determination issued by the Agency itself, however, or if a complaint is about the statewide provision of services rather than a local service issue, the Agency will provide an opportunity for informal resolution and a hearing, following the same kind of procedure as the Boards.

To assist Boards with the implementation of these rules, the Commission intends to provide training for Board personnel and support for development of Board processes. This technical assistance may include training on informal resolution procedures, hearing officer training, sample forms for Boards to use for complaints or determinations, and other assistance as needed to enable Boards to develop their own procedures.

The Commission retains the requirement that the Agency hearing officer shall be the final decision maker for state-level appeals. Federal WIA regulations require the Agency to complete its decision within 60 days of receipt of an appeal or complaint, leaving little time for an appeal process within the Agency. Therefore, pursuant to 20 C.F.R. §667.610, if a party wishes to appeal a decision of an Agency hearing officer under the federal WIA regulations, the appeal must be filed with the U.S. Department of Labor (DOL).

The Commission maintains separate procedures to resolve complaints concerning the basic labor exchange, as those procedures and timelines are dictated by 20 C.F.R. Part 658, Subpart E, §§400 - 418 and federal Employment Service law. Basic labor exchange complaints include those related to:

--violations of the terms and conditions of a job order;

--noncriminal complaints alleging acts or omissions by Texas Workforce Center staff; and

--complaints affecting migrant and seasonal farmworkers (MSFWs).

The Commission also maintains separate procedures for hearings and appeals under Chapter 807, relating to Career Schools and Colleges, and under Chapter 800, the General Administration rules relating to Board Sanctions. Hearings and appeals for Agency-administered programs are determined separately and distinctly from Board-administered workforce services. The repeal of Chapter 823 affects the hearings and appeals processes for each of these chapters; therefore, in separate, but concurrent, rulemaking proposals, certain sections of repealed Chapter 823 have been modified and incorporated into Chapter 800 and Chapter 807.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes new Subchapter A, General Provisions, as follows:

Subchapter A contains the general provisions of the Integrated Complaints, Hearings, and Appeals rules, which include the short title and purpose; definitions of terms used throughout Chapter 823; and provisions related to appeal representation.

Subchapter A also adds a detailed process related to deadlines after a determination is mailed to each party to a complaint or appeal. This provision applies to Boards, their designees, and the Agency.

§823.1. Short Title and Purpose

Section 823.1(a) states that Chapter 823 provides for an appeals process to the extent authorized by federal and state law, by rules administered by the Commission. The purpose remains the same as the purpose stated in repealed Chapter 823.

Section 823.1(b) specifically lists the types of complaints or determinations that are covered by Chapter 823. These pertain only to federal- or state-funded workforce services administered by the Agency or the Boards. These services include child care; TANF Choices; FSE&T Project RIO; WIA Adult, Dislocated Worker, and Youth; and Eligible Training Providers receiving WIA funds or other funds for training services.

Section 823.1(c)(1) - (7) lists determinations or complaints that are not covered under new Chapter 823, including:

(1) Across-the-board reductions in services, benefits, or assistance to a class of recipients.

(2) Matters governed by hearings procedures otherwise provided for in this title. This includes Board sanction hearings under Chapter 800, Subchapter E; hearings resulting from Agency monitoring activities under Chapter 800, Subchapter H; hearings regarding alleged breach of contract under Chapter 800, Subchapter K; career school cease and desist order hearings under Chapter 807, Subchapter S; career school licensing hearings under proposed Chapter 807, Subchapter T; Unemployment Insurance (UI) hearings under Chapter 815; child labor hearings under Chapters 815 and 817; Fair Housing Act hearings under Chapter 819; wage claim hearings under Chapters 815 and 821; and hearings regarding Trade Act activities or services under Chapter 815 and Chapter 849, Subchapter E.

(3) Alleged violations of nondiscrimination and equal opportunity requirements. Complaints regarding alleged violations of the nondiscrimination and equal opportunity requirements of WIA are handled by the Equal Opportunity Compliance Sectionof the Commission under Chapter 841, Subchapter F.

(4) Denial of benefits as it relates to mandatory work requirements for individuals receiving Choices and FSE&T services administered through the Texas Health and Human Services Commission (HHSC).

(5) Matters governing job service-related complaints as referenced in 20 C.F.R. Part 658, Subpart E, §§400 - 418 and federal Employment Service law.

(6) Services provided by the Agency pursuant to Texas Labor Code §301.023, Complaints Against the Commission.

(7) Alleged criminal violations of any services referenced in §823.1(b).

§823.2. Definitions

Section 823.2 sets forth the definitions for terms used throughout Chapter 823. The section incorporates definitions from repealed Chapter 823, and adds new terms and definitions.

Section 823.2(1) defines "Adverse action" as any denial or reduction of benefits or services to a party. This definition applies to individuals who are adversely affected by the type or level of services received from a Board or statewide One-Stop Service Delivery Network, including those individuals displaced from current employment by Texas Workforce Center customers.

Section 823.2(2) defines "Agency decision" as a written finding issued by an Agency hearing officer following a hearing before that hearing officer. The intent is to distinguish in rule, when nec-

essary, the difference between a Board decision and an Agency decision.

Section 823.2(3) defines "Appeal" as a written request for a review filed with the Board or Agency by a person in response to a determination or decision. The intent of this definition is to be consistent with other Commission rules that govern hearings and appeals.

Section 823.2(4) defines "Board decision" as a written finding issued by a Board following a hearing by a Board hearing officer. The intent is to distinguish in rule, when necessary, the difference between a Board decision and an Agency decision.

Section 823.2(5) defines "Complaint" as a written statement alleging a violation of any law, regulation, or rule relating to any federal- or state-funded workforce service. This definition is consistent with other definitions of complaint in this title. Boards also may receive objections regarding direct provision of workforce-related services that do not allege a violation of law or regulations, but rather concern dissatisfaction with the behavior of Board or contractor employees, or other matters not concerning the services themselves. These objections are handled through informal resolutions at the Board and contractor levels; they are not covered under this chapter and are not appealable to the Agency.

Section 823.2(6) defines "Determination" as a written statement issued by a Board, its designee, or the Agency relating to an adverse action, or to a provider or a contractor relating to denial or termination of eligibility, under programs administered by the Agency or Boards listed in §823.1(b).

Section 823.2(7) defines "Hearing officer" as an impartial individual designated by either the Board or the Agency to conduct hearings and issue administrative decisions. This new definition provides for the designation of hearing officers by both the Board and the Agency and is similar to the definition in repealed Chapter 823. A hearing officer need not be an attorney.

Section 823.2(8) defines "Informal resolution" as any procedure that results in an agreed final settlement between all parties to a complaint or an appeal. The Commission adds rules in new Subchapters B and C requiring the Boards and the Agency to provide an opportunity for informal resolution to resolve disputes resulting from either a complaint or an appeal to a determination.

Section 823.2(9) defines "Party" as a person who files a complaint or who appeals a determination, or the entity against which the complaint is filed or that issued the determination. This definition is found in repealed Chapter 823 but has been modified to reflect other changes in new Chapter 823.

§823.3. Agency and Board Timeliness

Section 823.3 provides an efficient context, based on established principles of due process, for adjudicating late appeals and holding some late appeals timely. The principles are drawn from Chapter 815 of this title, related to UI, case law, and experience.

Section 823.3 also adds a detailed process related to deadlines after a determination is mailed to a party. This provision applies to Boards, their designees, and the Agency.

Section 823.3(a) states that a properly addressed determination or decision is final for all purposes unless the party to whom it is mailed files an appeal no later than the fourteenth calendar day after the mailing date.

Section 823.3(b) states that each party to a complaint or an appeal must promptly notify, in writing, the Board, Board's designee, or the Agency with which the complaint or appeal was filed of any change of mailing address. Determinations and decisions shall be mailed to this address.

Section 823.3(b)(1) states that a copy of the determination or decision must be mailed to a properly designated party representative in order for it to become final.

Section 823.3(b)(2) states that the Board or Agency is responsible for making an address change only if the Board or Agency is specifically directed by the party to mail subsequent correspondence to the new address.

Section 823.3(b)(3) states that if the Board, Board's designee, or Agency addresses a document incorrectly, but the party receives the document, the time frame for filing an appeal shall begin as of the actual date of receipt by the party, whether or not the party receives the document within the appeal time frame set forth in §823.3(a). However, this requirement does not apply if the party fails to provide a current address or provides an incorrect address.

Section 823.3(c) states that a determination or decision mailed to a party shall be presumed to have been delivered if the document was mailed as specified in §823.3(b).

Section 823.3(c)(1) states in subparagraphs (A) and (B) that the determination or decision shall not be presumed to have been delivered:

(A) if there is tangible evidence of nondelivery, such as being returned to sender by the U.S. Postal Service; or

(B) if credible and persuasive evidence is submitted to establish nondelivery or delayed delivery to the proper address.

Section 823.3(c)(2) states that if a party provides the Board or Agency with an incorrect mailing address, a mailing to that address must be considered a proper mailing, even if there is proof that the party never received the document.

Section 823.3(d) states that a complaint or an appeal must be in writing. Complaints or appeals may be filed electronically only if filed in a form approved by the Agency in writing.

Section 823.3(d)(1) - (7) specifies that the filing date for a complaint or an appeal is:

(1) the postmarked date or the postal meter date (where there is only one or the other);

(2) the postmarked date, if there is both a postmarked date and a postal meter date;

(3) the date the document was delivered to a common carrier, which is equivalent to the postmarked date;

(4) three business days before receipt by the Board or Agency, if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;

(5) the date of the document itself, if the document date is fewer than three days earlier than the date of receipt and the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;

(6) the date of the document itself, if the mailing envelope containing the complaint or appeal is lost after delivery to the Board or Agency. If the document is undated, the filing date must be

deemed to be three business days before receipt by the Board or Agency; or

(7) the date of receipt by the Board or Agency, if the document was filed by fax.

Section 823.3(e) states that credible and persuasive testimony under oath, subject to cross-examination, may establish a filing date that is earlier than the dates established under §823.3(d). A party may be allowed to establish a filing date earlier than a postal meter date or the date of the document itself only upon a showing of extremely credible and persuasive evidence. Likewise, when a party alleges that a complaint or appeal has been filed that the Board or Agency has never received, the party must present extremely credible and persuasive evidence to support the allegation.

Section 823.3(f)(1) and (2) states that a decision or determination shall not be deemed final if a party shows that a representative of the Board, Board's designee, or Agency has given misleading information on appeal rights to the party. The party shall specifically establish:

(1) how the party was misled; or

(2) what misleading information the party was given, and, if possible, by whom the party was misled.

Section 823.3(g) states that there is no good cause exception to the timeliness rules.

§823.4. Representation

Section 823.4 states that each party may authorize a hearing representative to assist in presenting a complaint or an appeal on behalf of the party under this chapter. The Agency or Board may require authorization to be in writing. On behalf of the party, the representative may exercise any of a party's rights under this chapter. Information from repealed Chapter 823 relating to Information on Right of Appeal is incorporated throughout new Chapter 823, where appropriate.

SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES

The Commission proposes new Subchapter B, Board Complaint and Appeal Procedures, as follows:

Subchapter B contains Board-level complaint and appeal procedures related to all workforce services administered by the Boards.

The WIA regulations require that procedures be developed related to processes dealing with complaints, appeals, and hearings at both the local level and the state level. In addition, WIA also provides that eligible training providers denied WIA funding for training services be given the right to appeal the denial to the Board or the Agency. These procedures are currently set forth in Chapter 841 of this title. Under a separate, but concurrent, rulemaking proposal, the Commission proposes to repeal the Chapter 841 rules related to local and state appeals; local-level complaint procedures; and state-level hearing procedures. The repealed Chapter 841 sections have been incorporated in new Chapter 823. This new provision related to processes dealing with complaints, appeals, and hearings applies to the workforce services administered by the Agency or Board as listed in §823.1(b).

Subchapter B includes a new provision related to informal resolution. Once a complaint has been filed, an opportunity for informal resolution will be offered by the Board or its designee and the Agency. This provision is currently located in Chapter 841 of this title relating to complaints filed with the Board; however, there is no informal resolution provision offered by the Agency. New Chapter 823 allows the Boards and the Agency to resolve customers' issues in an informal manner in advance of a Board or Agency hearing. Under a separate, but concurrent, rulemaking proposal, the Commission proposes to repeal the Chapter 841 rules related to local-level informal resolution. New Chapter 823 modifies and incorporates these repealed Chapter 841 rules. The informal resolution provision applies to workforce services administered by the Boards or the Agency as listed in §823.1(b).

Subchapter B also adds a new provision that incorporates similar information related to determinations found throughout repealed Chapter 823. A determination is provided to any person affected by a Board or Board contractor's adverse action. Boards will be required to establish policies to ensure Texas Workforce Center customers receive a written determination notifying them of any adverse actions and to provide these customers with information on complaints and appeal rights. The intent of the Commission is to ensure the protection of the due process rights of Texas Workforce Center customers.

Subchapter B includes a new provision related to Board hearings. Board hearings or "Board reviews" are addressed in Chapters 809, 811, and 841. The sections in each of these chapters related to Board reviews are proposed for repeal under separate, but concurrent, rulemaking proposals. New Chapter 823 contains a single process for Board hearings and provides specific and consistent guidance for Boards to conduct hearings when a customer or provider appeals a determination.

§823.10. Board-Level Complaints

Section 823.10 contains specific responsibilities regarding filing complaints with a Board.

Section 823.10(a)(1) - (3) identifies persons who may file a complaint, including:

(1) Texas Workforce Center customers. These are individuals who have applied for or are eligible to receive federal- and state-funded workforce services administered by the Agency or Boards listed in §823.1(b).

(2) other interested persons affected by the One-Stop Service Delivery Network, including subrecipients. These persons may include child care or other service providers that have received a determination issued by a Board.

(3) previously employed individuals who believe they were displaced by a Texas Workforce Center customer participating in work-based services such as subsidized employment, work experience, or workfare. This subparagraph complies with the nondisplacement rules required by several federal agencies.

The U.S. Department of Health and Human Services (DHHS) regulations at 45 C.F.R. §261.70 require that safeguards be in place to ensure that TANF individuals do not displace other workers. In addition, states must establish and maintain procedures to resolve complaints of alleged violations of the displacement rule.

DOL regulations at 20 C.F.R. §667.270(a) require that safeguards be in place to ensure that participants in WIA employment and training activities do not displace other employees. Both regular employees and program participants may file a complaint.

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) requires states to have a nondisplacement rule. The statute at 7 C.F.R. §273.7(m)(6)(i)(H) states that agencies must not place an FSE&T workfare participant in a work position that has the effect of replacing or preventing the employment of an individual not participating in the workfare program. In addition, 7 C.F.R. §273.7(e)(1)(iv)(A) and (B) states that agencies must not place FSE&T individuals participating in workfare or work experience in an employment and training activity that has the effect of replacing the employment of an individual not participating in the employment and training experience program. The regulations go on to state that employers must provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours. Although FNS does not require states to establish procedures to resolve complaints alleging violations of the displacement rule, the Commission includes the FNS displacement rule as part of service integration for workforce services.

Section 823.10(b) states that a complaint is required to be in writing and to be filed within 180 days of the alleged violation. This requirement, located in §841.63, Time Limitations at Local Level, which is concurrently proposed for repeal, is modified and incorporated in new Chapter 823.

Section 823.10(c) requires the complaint to contain the party's name, current mailing address, and a brief statement of the alleged violation identifying the facts on which the complaint is based. Portions of this requirement are found in §841.62, Grievance Filing Procedures at the Local Level, which is concurrently proposed for repeal. The requirement is modified and incorporated in new Chapter 823.

Section 823.10(d)(1) - (4) requires Boards to ensure that information about complaint procedures is provided to individuals, eligible training providers, and subrecipients. Information must be presented in a manner that is easily understood by the affected individuals, including youth, individuals with disabilities, and individuals with limited English proficiency, and must be:

(1) posted in a conspicuous public location at each Texas Workforce Center;

(2) provided in writing to any customer;

(3) made available in writing to any individual upon request; and

(4) placed in each Texas Workforce Center customer's file.

This provision follows federal WIA requirements set forth in §841.64, LWDB Responsibilities, which is concurrently proposed for repeal, and is modified and incorporated in new Chapter 823.

§823.11. Determinations

Section 823.11 relates to Boards and their designees issuing determinations regarding actions that affect the type and level of workforce services provided. This section includes the information required when issuing a determination to training providers found by the Boards to be ineligible to receive WIA funding for training services. Additionally, this section retains provisions from §841.48, Local Appeals, concurrently proposed for repeal, which requires that a written decision on an appeal be provided to an eligible training provider whose eligibility has been terminated.

Section 823.11(a) requires that a Board or its designee must promptly issue a written determination regarding any action adversely affecting the type and level of services to any person directly affected. The intent of the Commission is to ensure the protection of due process and other legal rights of Texas Workforce Center customers and other persons.

Section 823.11(b)(1) - (6) requires that the determination include the following information:

(1) A brief statement of the adverse action;

(2) The mailing date of the determination;

(3) An explanation of the individual's right to an appeal;

(4) The procedures for filing an appeal to the Board, including applicable time frames as required in §823.3;

(5) The right to have a hearing representative, including legal counsel; and

(6) The address or fax number to which the appeal must be sent.

This subsection incorporates similar provisions related to determinations found throughout repealed Chapter 823.

Section 823.11(c)(1) - (3) requires Boards to allow providers of training services the opportunity to appeal a determination related to the:

(1) denial of eligibility as a training provider under WIA §122(b), §122(c), or §122(e);

(2) termination of eligibility as a training provider or other action under WIA §122(f); or

(3) denial of eligibility as a training provider of on-the-job or customized training by the operator of a Texas Workforce Center under WIA §122(h).

This section retains certain provisions from §841.48, Local Appeals, which is concurrently proposed for repeal. In addition, this provision references the WIA requirements at 20 C.F.R. §667.640(b) relating to "denial or termination of eligibility as a training provider." States are required to provide an opportunity to appeal a denial or termination of eligibility by Boards.

Section 823.11(d) states that a person who receives a determination from a Board or a Board's designee may file an appeal with the Board requesting a review of the determination. The appeal must be submitted in writing and filed within 14 calendar days of the mailing date of the determination. The appeal must include the party's proper mailing address. This provision is located in the Commission's Child Care Services, Choices, and WIA rules in §809.131 and §809.132; §§811.71 - 811.73; and §§841.48, 841.49, 841.61 - 841.69, 841.91 - 841.93, 841.95, and 841.96, respectively. These sections are proposed for repeal, and one single uniform procedure for appealing a determination is included in new Chapter 823.

§823.12. Board Informal Resolution Procedure

Section 823.12 identifies the specific responsibilities of a Board to conduct informal resolution. This new provision also includes recommendations on how to conduct informal resolution.

Section 823.12(a) states that a Board shall provide the opportunity for informal resolution of a complaint or appeal. This provision allows Boards or their designees the opportunity to resolve customers' issues in an informal manner in lieu of a Board hearing. This subsection follows federal WIA requirements set forth in §841.65, Local Level Informal Conference Procedure, which is concurrently proposed for repeal. This information is modified and incorporated in new Chapter 823.

Section 823.12(b)(1) - (5) provides recommendations on how informal resolution may be conducted, including but not limited to:

(1) informal meetings with case managers or their supervisors;

(2) second reviews of the case file;

(3) telephone calls or conference calls to the affected parties;

(4) in-person interviews with all affected parties; or

(5) written explanations or summaries of the laws or regulations involved in the complaint.

This provision allows Boards or their designees to determine the most expeditious and practical method of resolving complaints or appeals in an informal manner, thereby possibly precluding the necessity of a Board hearing.

§823.13. Board Hearings

Section 823.13 provides the requirements for Board hearings for resolving complaints or appeals filed from a determination. The provisions in this section are retained, with modifications, from certain rules in Chapters 809, 811, 813, and 841 of this title, which are concurrently proposed for repeal.

Section 823.13(a) states that if the parties reach a final agreement through informal resolution, no hearing shall be held. It is not necessary for a complaint or appeal to proceed to a Board hearing if all parties reach an agreement through the informal resolution procedure.

Section 823.13(b) requires Boards to provide an opportunity for a hearing to resolve an appeal or complaint, if not succesfully resolved through the informal resolution procedure. This provision is found in §841.66, Local Level Hearing Procedure, which is proposed for repeal. The language is modified and included in new Chapter 823.

Section 823.13(c) requires Boards to complete either an agreement resulting from informal resolution or a hearing and Board decision within 60 calendar days of the original filing of an appeal or complaint. This follows federal WIA requirements, set forth in §841.66, Local Level Hearing Procedure, which is concurrently proposed for repeal. The language is modified and incorporated in new Chapter 823.

Section 823.13(d) requires Boards to provide a process that allows an individual alleging a labor standards violation to submit a complaint through a binding arbitration procedure. Examples of labor standards violations might include infringement on the right to collective bargaining, pay disputes, employment discrimination, or disputes as to employee benefits. Most collective bargaining agreements have specific provisions covering such violations and specific grievance procedures to address them. These procedures frequently include binding arbitration under the Federal Arbitration Act (Title 9, U.S.C., §§1 - 16) in which both parties agree to submit the dispute to a neutral arbitrator. The arbitrator's decision is final and binding upon both parties. This section follows federal WIA requirements to ensure that arbitration rights under collective bargaining agreements are enforced. In such a case, the Board may be required to follow the provisions of the applicable collective bargaining agreement with respect to its arbitration procedure.

Section 823.13(e) states that within 60 calendar days of the filing of the appeal or complaint, the Board shall send the parties a decision setting forth the results of the Board hearing. This decision shall be issued by a Board hearing officer, shall include findings of fact and conclusions of law, and shall provide information about appeal rights. This requirement follows federal WIA requirements and is located in §841.66, Local Level Hearing Procedure, which is concurrently proposed for repeal. This language is modified and incorporated in new Chapter 823.

Section 823.13(f) provides that a party may file an appeal with the Agency if a Board decision is not mailed within the 60-calendar-day time frame described in subsection (e) of this section or if any party disagrees with a timely Board decision. This follows federal WIA requirements and is contained in the proposed repeal of §841.66, Local Level Hearing Procedure. The language is modified and incorporated in new Chapter 823.

Section 823.13(g) notifies parties that an appeal to the Agency must be filed in writing with TWC Appeals, Texas Workforce Commission, 101 East 15th St., Room 410, Austin, Texas 78778-0001, within 14 calendar days after the mailing date of the Board's decision. If the Board does not issue a decision within 60 calendar days of the date of the filing of the original appeal or complaint, an appeal to the Agency must be filed no later than 90 calendar days after the filing date of the original appeal or complaint. This requirement is found in §841.69, Appeal, which is concurrently proposed for repeal. The language is modified and incorporated in new Chapter 823.

§823.14. Board Policies for Resolving Complaints and Appeals of Determinations

Section 823.14 relates to Boards' policies for complaints and appeals of determinations, informal resolution, and hearings at the Board level. This requirement located in Chapter 841, Subchapter D, which is concurrently proposed for repeal, is modified and incorporated in new Chapter 823.

Section 823.14(a) requires Boards to develop written policies to handle complaints and appeals, provide the opportunity for informal resolution, and conduct hearings in accordance with this subchapter for individuals, eligible training providers, and other persons affected by the One-Stop Service Delivery Network, including subrecipients.

Section 823.14(b) requires a Board and its subrecipients to maintain written copies of these policies and make them available to the Agency, Texas Workforce Center customers, and other interested persons upon request. This provision is modified and retained from Chapter 841, Subchapter D, which is concurrently proposed for repeal

Section 823.14(c)(1) - (8) lists the minimum requirements for Board policies relating to complaints, informal resolution, and hearings. Required Board policies are found throughout other referenced rules, which are concurrently proposed for repeal. New §823.14(c) provides an itemized list of required policies in one subsection. Boards must develop and approve policies to:

(1) ensure that determinations are provided as specified in §823.11;

(2) ensure that information about complaint procedures is available as described in §823.10(d);

(3) notify persons that complaints must be submitted in writing and set forth the facts on which the complaint is based, and notify individuals of the time limit in which to file a complaint;

(4) maintain a complaint log and all complaint-related materials in a secure file for a period of three years;

(5) designate an individual to be responsible for investigating, documenting, monitoring, and following up on complaints;

(6) inform persons of the:

(A) right to file a complaint;

(B) right to appeal a determination;

(C) opportunity for informal resolution and a Board hearing;

(D) Boards' time frames for either reaching informal resolution or issuing a decision; and

(E) right to file an appeal to the Agency, including information on where to file the appeal;

(7) designate hearing officers to conduct Board hearings, document actions taken, and render decisions; and

(8) ensure that complaints remanded from the Agency to the Board for resolution are handled in a timely fashion and follow established Board policies and time frames.

Section 823.14(d) notifies Boards that complaints filed directly with the Agency may be remanded to the appropriate Board to be processed in accordance with the Board's policies for resolving complaints. The new subsection, which complies with WIA regulations allowing complaints to be remanded first to the appropriate Board for resolution, provides that a customer can file a complaint directly with the Agency and that the Agency then may choose to remand a complaint to the Board for resolution.

SUBCHAPTER C. AGENCY COMPLAINT AND APPEAL PROCEDURES

The Commission proposes new Subchapter C, Agency Complaint and Appeal Procedures, as follows:

Subchapter C contains the Agency's complaint and appeal procedures. Similar to repealed Subchapters B and C, new Subchapter C contains rule provisions related to the setting of hearings, postponement and continuance of hearings, evidence presented for hearings, hearing officer disqualification, recusal and reassignment, hearing procedures, and withdrawal of complaints and appeals. New Subchapter C contains many of the provisions related to general hearings found throughout repealed Chapter 823.

Subchapter C adds a new provision related to state-level complaints. WIA regulations require that procedures be developed related to processes for complaints, hearings, and appeals at the state level. The Commission's WIA rules, Chapter 841, currently do not specify that a customer can file a complaint directly with the Agency, nor do these rules specify that the Agency may remand a complaint to the Boards for resolution. Instead, Chapter 841 indicates that complaints first must be addressed by the Boards before an appeal may be made to the Agency. This new Chapter 823 provision complies with WIA regulations and provides specific processes related to complaints filed directly with the Agency.

§823.20. State-Level Complaints

Section 823.20 relates to the responsibilities of the Agency to establish procedures regarding complaints received at the state level. The provisions in this section are retained and modified from other rules in this title, which are proposed for repeal.

Section 823.20(a) specifies that a Texas Workforce Center customer or other interested person affected by the statewide One-Stop Service Delivery Network, including service providers alleging a noncriminal violation of the requirements of any federal- or state-funded workforce services, may file a complaint with the Agency. WIA regulations require states to develop procedures to deal with complaints from participants and other interested persons affected by the statewide workforce system. This new provision complies with federal WIA regulations and includes the workforce services referenced in §823.1(b).

Section 823.20(b) states that complaints shall be in writing and filed within 180 calendar days of the alleged violation. The complaint shall include the party's name, current mailing address, and a brief statement of the alleged violation identifying the facts on which the complaint is based. To maintain consistency for deadlines to file complaints, the Commission has aligned the complaint filing deadlines with the Board filing deadlines set forth in new Chapter 823.

Section 823.20(c) states that the complaint must be filed with TWC Appeals, Texas Workforce Commission, 101 East 15th St., Room 410, Austin, Texas 78778-0001. This subsection retains language from the concurrent proposed repeal of certain sections of the Commission's Child Care Services, Choices, FSE&T, and WIA rules.

Section 823.20(d) requires the Agency to provide an opportunity for informal resolution. This provision allows the Agency to resolve customers' issues in an informal manner in advance of the Agency's appeal procedures. This follows federal WIA requirements and also is located in §841.93, State Level Informal Resolution and Hearing for Alleged Violations of the Requirements of WIA by the State or for Complaints by Individuals Affected by the Statewide Program, concurrently proposed for repeal.

Section 823.20(e) provides that if the informal resolution procedure results in a final agreement between the parties, no hearing is required.

Section 823.20(f) states that a complaint not resolved by the informal resolution procedure shall be set for a hearing and a decision shall be issued in accordance with procedures for appeals under this subchapter. This provision is similar to language in the prehearing procedures section in repealed Chapter 823.

Section 823.20(g) notifies Boards that complaints filed directly with the Agency may be returned to the appropriate Board to be processed in accordance with the Board's hearing policies. The new subsection, which complies with WIA regulations allowing complaints to be remanded first to the appropriate Board for resolution, provides that a customer can file a complaint directly with the Agency and that the Agency may remand the complaint to the Board for resolution. Thus, if a person files a complaint directly with the Agency regarding a concern with the local provision of services as opposed to the statewide service network, the Agency has the discretion to send the complaint to the appropriate Board.

§823.21. Setting a Hearing

Section 823.21 identifies the necessary requirements to set an Agency hearing. The provisions in this section are retained from the repealed Chapter 823 with minor modifications.

Section 823.21(a) states that a WIA-funded training provider or other provider certified by the Agency and later found to be ineligible to receive funding as a training provider may file an appeal directly with the Agency. Section 823.21(a) retains certain provisions from §841.49, State Level Appeals, which is concurrently proposed for repeal. WIA regulations at 20 C.F.R. §667.640 require states to develop a written appeals process for appeals

requested by providers found by the Agency to be ineligible to receive WIA funding for training services.

Section 823.21(b) states that upon receipt of the appeal from a Board decision, an appeal from a WIA-funded training provider found to be ineligible by the Agency, or if no informal resolution of a complaint is successfully reached, the Agency shall promptly assign a hearing officer and mail a notice of hearing to the parties and/or their designated representatives. The hearing shall be set and held promptly and in no case later than as provided by applicable statute or rule.

Section 823.21(c)(1) - (3) states that the notice of hearing shall be in writing and include:

(1) a statement of the date, time, place, and nature of the hearing;

(2) a statement of the legal authority under which the hearing is to be held; and

(3) a short and plain statement of the issues to be considered during the hearing.

Section 823.21(d) provides that the notice of hearing shall be issued at least 10 calendar days before the date of the hearing unless a shorter period is permitted by statute.

Section 823.21(e) states that hearings shall be conducted by telephonic means, unless an in-person hearing is required by applicable statute or the Agency determines that an in-person hearing is necessary.

Section 823.21(f) states that parties needing special accommodations, including the need for a bilingual or sign language interpreter, shall make this request before the hearing is set, if possible, or as soon as practical.

§823.22. Postponement and Continuance

Section 823.22 relates to the Agency's policies regarding the postponement and continuance of an Agency hearing. The provisions in this section are retained from the repealed Chapter 823 with minor modifications.

Section 823.22(a) states that the hearing officer may grant a postponement of a hearing for good cause at a party's request. Except in emergencies or unusual circumstances confirmed by a telephone call or other means, postponements shall not be granted within two days of the scheduled hearing.

Section 823.22(b)(1) - (5) provides that a continuance of a hearing may be ordered at the discretion of the hearing officer if:

(1) there is insufficient evidence upon which to make a decision;

(2) a party needs additional time to examine evidence presented at the hearing;

(3) the hearing officer considers it necessary to enter into evidence additional information or testimony;

(4) an in-person hearing is necessary for proper presentation of the evidence; or

(5) any other reason deemed appropriate by the hearing officer.

Section 823.22(c) states that the hearing officer shall advise the parties of the reason for the continuance and of any additional information required. At the continuance, the parties shall have an opportunity to rebut any additional evidence.

§823.23. Evidence

Section 823.23 relates to the Agency's evidence procedures for hearings. The provisions in this section are retained from repealed Chapter 823 rules with minor modifications.

Section 823.23(a), Evidence Generally, states that evidence, including hearsay evidence, shall be admitted if it is relevant and if, in the judgment of the hearing officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

Section 823.23(b), Exchange of Exhibits, states that to be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. Any documentary evidence to be presented during a telephonic hearing must be exchanged with all parties and a copy must be provided to the hearing officer in advance of the hearing. Any documentary evidence to be presented at an in-person hearing must be exchanged at the hearing.

Section 823.23(c), Stipulations, states that the parties, with the consent of the hearing officer, may agree in writing to relevant facts. The hearing officer may decide the appeal on the basis of such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.

Section 823.23(d), Experts and Evaluations, states that if relevant and useful, testimony from an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency may be ordered by hearing officers, on their own motion, or at a party's request. Any such expert or evaluation shall be at the expense of one of the parties.

Section 823.23(e), Subpoenas, states that:

(1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.

(2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.

(3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.

(4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.

§823.24. Hearing Procedures

Section 823.24 describes the Agency's hearing procedures, which include the presentation of evidence, examination of witnesses and parties, additional evidence, and appropriate hearing behavior. The provisions in this section are retained from the repealed rules and have not substantially changed.

Section 823.24(a)(1) - (4), General Procedure, states that all hearings shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. The hearing shall be conducted de novo, that is, a new hearing without regard to any previous determinations or decisions issued by a Board. The

hearing officer shall develop the evidence. All issues relevant to the appeal shall be considered and addressed, including:

(1) presentation of evidence;

(2) examination of witnesses and parties;

(3) additional evidence; and

(4) appropriate hearing behavior.

Section 823.24(b)(1) - (3), Records, identifies the records procedures required for an Agency hearing, including:

(1) The hearing record must include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.

(2) The hearing record must be maintained in accordance with federal or state law.

(3) Confidentiality of information contained in the hearing record must be maintained in accordance with federal and state law.

§823.25. Withdrawal of Complaint or Appeal

Section 823.25 states a party may request a withdrawal of its own complaint or appeal at any time before a final Agency decision is issued. The hearing officer may grant the request for withdrawal in writing and issue an order of dismissal. Provisions in this section are retained from the repealed rules and have not substantially changed.

§823.26. Hearing Officer Independence and Impartiality

Section 823.26 relates to the Agency hearing officers' powers and impartiality. The provisions in this section are in part retained from the repealed rules.

Section 823.26(a) provides that a hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding the handling of any issues during the pendency of a case and in issuing their written decisions.

Section 823.26(b) provides that a hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination or Board decision on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.

Section 823.26(c) states that a hearing officer may withdraw from a hearing to avoid the appearance of impropriety or partiality.

Section 823.26(d) states that following any disqualification or withdrawal of a hearing officer, the Agency shall assign an alternate hearing officer to the case. The alternate hearing officer shall not be bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.

§823.27. Ex Parte Communications

Section 823.27 is intended to prevent improper communication with hearing officers, to ensure that their decisions are based solely on the evidence and arguments presented at the hearing. The section states that:

(a) The hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte communications with the hearing officer on behalf of any interested person or party.

(b) If the hearing officer receives any such ex parte communication, the other parties shall be given an opportunity to review that communication.

(c) Nothing shall prevent the hearing officer from communicating with parties or their representatives about routine matters such as requests for continuances or opportunities to inspect the file.

(d) The hearing officer may initiate communications with an Agency employee who has not participated in a hearing or any determination in the case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS

The Commission proposes new Subchapter D, Agency-Level Decisions, Reopenings, and Rehearings, as follows:

Subchapter D identifies and contains rule provisions related to the Agency's specific responsibilities for Agency decisions, motions to request the reopening of hearings, and motions for rehearings. Subchapter D is similar to the repealed Subchapter D and retains many of the provisions related to General Hearings found throughout repealed Chapter 823.

§823.30. Hearing Decision

Section 823.30 describes the Agency's procedures related to its hearing decisions. The provisions in this section are retained from repealed Chapter 823 rules with minor modifications.

Section 823.30(a) states that following the conclusion of the hearing, the hearing officer shall promptly issue a written decision on behalf of the Agency.

Section 823.30(b)(1) - (3) states that the hearing decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing and shall include:

(1) a list of the individuals who appeared at the hearing;

(2) the findings of fact and conclusions of law reached on the issues; and

(3) the affirmation, reversal, or modification of a determination or Board decision.

Section 823.30(c) states that the Agency may assume continuing jurisdiction to modify or correct a hearing decision until the expiration of 14 calendar days from the mailing date of the hearing decision unless a party files a timely motion for rehearing.

§823.31. Motion for Reopening

Section 823.31 describes the Agency's procedures to request a reopening of a hearing. The provisions in this section are retained from repealed rules with minor modifications.

Section 823.31(a) states that if a party does not appear for an Agency hearing, the party has the right to request a reopening of the hearing within 14 calendar days from the date the Agency decision is mailed.

Section 823.31(b) states that the motion shall be in writing and detail the reason for failing to appear at the hearing.

Section 823.31(c) states that the hearing officer may schedule a hearing on whether to grant the reopening.

Section 823.31(d) states the motion may be granted if it appears to the hearing officer that the party has shown good cause for failing to appear at the hearing.

§823.32. Motion for Rehearing and Decision

Section 823.32 describes the Agency's procedures regarding motions for rehearings and decisions related to rehearings. The provisions in this section are retained from repealed rules and have not substantially changed.

Section 823.32(a) states that a party has 14 calendar days from the date the Agency decision is mailed to file a motion for rehearing. A rehearing may be granted only for the presentation of new evidence.

Section 823.32(b) states that motions for rehearing must be in writing and allege the new evidence to be considered. The appellant must show a compelling reason why the evidence was not presented at the hearing.

Section 823.32(c) states that if the hearing officer determines that the alleged, new evidence warrants a rehearing, a rehearing must be scheduled at a reasonable time and place.

Section 823.32(d) states that the hearing officer shall issue a written decision following the hearing.

Section 823.32(e) states that the hearing officer may also issue a decision denying a motion for rehearing.

§823.33. Finality of Decision

Section 823.33 describes when the Agency hearing officer's decision becomes final. Certain provisions in this section are retained, substantially unchanged, from the repealed rules.

Section 823.33(a)(1) - (3) states the decision of the hearing officer is the final decision of the Agency after the expiration of 14 calendar days from the mailing date of the decision, unless within that time:

(1) a request for reopening is filed with the Agency;

(2) a request for rehearing is filed with the Agency; or

(3) the Agency assumes continuing jurisdiction to modify or correct a decision.

Section 823.33(b) states any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency must be final on the expiration of 14 calendar days from the mailing date of the decision, modification, or correction.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no estimated additional costs to state government as a result of enforcing or administering the rules. Because the proposed sections give Boards the responsibility to conduct hearings on appeals from all Board determinations, Boards (local governments) in the aggregate may experience a total estimated $100,000 per year increase in costs as they comply with the new rules requiring such appeals to be heard at the Board level. The total for such a cost increase for any given Board cannot be stated with certainty, and may also be influenced by numerous factors, including the number of determinations issued, the complexity of individual hearings, and the effectiveness of the Board's informal resolution process, as outlined in proposed §823.12.

There are estimated corresponding reductions in cost to the state (i.e, the Agency) of $100,000 (including indirect administration and personnel fringe benefits) per year, as the anticipated number of appeals conducted at the state level will be minimal over the ensuing five-year period. No reduction in cost to local governments is anticipated as a result of enforcing or administering the rules.

There are no foreseeable increases or losses in revenue to the state and to local governments as a result of enforcing or administering the rules.

Enforcing or administering these rules does not have foreseeable implications relating to the cost or revenues of the state or local governments, aside from those possible increases of Board costs noted above.

There will be no probable economic costs to persons required to comply with these rules, aside from those possible increases of Board costs noted above, and there will be no adverse economic effect on small businesses or microbusinesses.

The reasoning for these conclusions includes the following:

1. Recent experience indicates that the vast majority of hearings resulting from Board actions were related to child care determinations, and an estimated 1,600 child care hearings statewide were conducted by the Agency during Fiscal Year 2006 (FY'06), at an estimated aggregate annual cost of approximately $100,000. (Actual costs totaled $105,205 during FY'06 and $86,965 during FY'05, averaging $96,085 per year over the two-year period, including all direct and indirect costs, and including employee fringe benefits.) As a result of the proposed rule's new hearings provisions, it is estimated that the same number of child care hearings may be held by the Boards each year during the ensuing five-year period. Proposed new §823.12 provisions require that Boards provide an opportunity for informal resolution of a complaint or appeal, and identify their responsibilities to attempt informal resolution in advance of a formal Board hearing. In TWC's experience, use of informal resolution in the areas of UI and wage claims routinely results in settlement of the vast majority of disputes, without the need for a formal hearing. An estimated 1,600 child care appeal hearings were conducted by TWC during FY'06--most of them from a small proportion of Boards--indicating that these particular Boards may benefit from the institution of informal resolution procedures, which could cause the number of hearings to decline from previous years. While there is no reasonable alternative basis to estimate future potential costs than to estimate the same number of child care hearings, at the average estimated annual aggregated cost of such Agency hearings (for example, the cost of Board hearings could increase during the initial period of time following the proposed rules going into effect--particularly regarding child care appeals for those few Boards that have been relying disproportionately on the Agency to conduct such appeals--then subsequently decline during the ensuing period as experience is gained), TWC believes that the quicker and more effectively the informal complaint and resolution provisions are instituted by Boards, the greater the likelihood that fewer hearings will be needed. Also, as noted in Part I. Purpose, Background, and Authority for these proposed rules, the Commission intends to provide training and technical assistance in order to assist Boards with implementation of these rules, including training on informal resolution procedures,

hearing officer training, sample forms for complaints or resolution procedures, or other assistance in order to minimize costs as much as possible.

2. The reasoning for concluding that there will be no adverse economic effect on small businesses or microbusinesses is that small or microbusinesses are not regulated by these rules, except for those career schools or colleges that may be small businesses or microbusinesses. The proposed repeal of Chapter 823 hearings and appeals rules for career schools and colleges and the addition of new Chapter 807 Career Schools and Colleges hearings and appeals rules do not apparently represent a significant change and is not additionally substantively burdensome for small or microbusinesses.

Mark Hughes, Director, Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide a unified and streamlined process regarding the resolution of complaints, hearings, and appeals related to Board-administered workforce services. In addition, due process principles and other legal rights will be protected, program outcomes will be achieved more effectively, and workforce services will be further integrated.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§823.1 - 823.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as the Texas Government Code, Chapter 2308.

§823.1. Short Title and Purpose.

§823.2. Definitions.

§823.3. Information on Right of Appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702707
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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SUBCHAPTER B. PRE-HEARING PROCEDURE

40 TAC §§823.11 - 823.15

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as the Texas Government Code, Chapter 2308.

§823.11. Request for Hearing.

§823.12. Setting of Hearing.

§823.13. Postponement.

§823.14. Evidence.

§823.15. Hearing Officer Disqualification and Withdrawal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702708
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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SUBCHAPTER C. CONDUCT OF HEARING

40 TAC §§823.31 - 823.34

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as the Texas Government Code, Chapter 2308.

§823.31. Hearing Procedure.

§823.32. Continuance of Hearing.

§823.33. Withdrawal of Appeal.

§823.34. Change in Determination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702709
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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SUBCHAPTER D. DECISIONS, NON-APPEARANCES, AND REHEARINGS

40 TAC §§823.41 - 823.44

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as the Texas Government Code, Chapter 2308.

§823.41. Decision.

§823.42. Reopened Decision for Non-appearance.

§823.43. Rehearing Decision.

§823.44. Finality of Decision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702710
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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CHAPTER 823. INTEGRATED COMPLAINTS, HEARINGS, AND APPEALS

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§823.1 - 823.4

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§823.1. Short Title and Purpose.

(a) This chapter provides an appeals process to the extent authorized by federal and state law and by rules administered by the Texas Workforce Commission (Agency).

(b) This section applies only to complaints or determinations regarding federal- or state-funded workforce services administered by the Agency or Local Workforce Development Boards (Boards), as follows:

(1) Child care;

(2) Temporary Assistance for Needy Families (TANF) Choices;

(3) Food Stamp Employment and Training (FSE&T);

(4) Project Reintegration of Offenders (Project RIO);

(5) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth; and

(6) Eligible Training Providers (ETP) receiving WIA funds or other funds for training services.

(c) Determinations or complaints relating to the following matters are not governed by this chapter:

(1) Across-the-board reductions of services, benefits, or assistance to a class of recipients;

(2) Matters governed by hearing procedures otherwise provided for in this title;

(3) Alleged violations of nondiscrimination and equal opportunity requirements;

(4) Denial of benefits as it relates to mandatory work requirements for individuals receiving TANF and FSE&T services and is administered through the Texas Health and Human Services Commission (HHSC);

(5) Matters governing job service-related complaints as referenced in 20 C.F.R. Part 658, Subpart E, §§400 - 418 and the federal Employment Service law;

(6) Services provided by the Commission pursuant to Texas Labor Code §301.023 - Complaints Against the Commission; or

(7) Alleged criminal violations of any services referenced in §823.1(b).

§823.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Adverse action--Any denial or reduction in benefits or services to a party, including displacement from current employment by a Texas Workforce Center customer.

(2) Agency decision--The written finding issued by an Agency hearing officer following a hearing before that hearing officer.

(3) Appeal--A written request for a review filed with the Board or Agency by a person in response to a determination or decision.

(4) Board decision--The written finding issued by a Board hearing officer following a hearing before that hearing officer in response to an appeal or complaint.

(5) Complaint--A written statement alleging a violation of any law, regulation, or rule relating to any federal- or state-funded workforce service.

(6) Determination--A written statement issued to a Texas Workforce Center customer by a Board, its designee, or the Agency relating to an adverse action, or to a provider or contractor relating to denial or termination of eligibility under programs administered by the Agency or a Board listed in §823.1(b).

(7) Hearing officer--An impartial individual designated by either the Board or the Agency to conduct hearings and issue administrative decisions.

(8) Informal resolution--Any procedure that results in an agreed final settlement between all parties to a complaint or an appeal.

(9) Party--A person who files a complaint or who appeals a determination or the entity against which the complaint is filed or that issued the determination.

§823.3. Agency and Board Timeliness.

(a) A properly addressed determination or decision is final for all purposes unless the party to whom it is mailed files an appeal no later than the fourteenth calendar day after the mailing date.

(b) Each party to a complaint or an appeal shall promptly notify, in writing, the Board, Board's designee, or the Agency with which the complaint or appeal was filed of any change of mailing address. Determinations and decisions shall be mailed to this address.

(1) A copy of the determination or decision must be mailed to a properly designated party representative in order for it to become final.

(2) The Board or Agency is responsible for making an address change only if the Board or Agency is specifically directed by the party to mail subsequent correspondence to the new address.

(3) If the Board, Board's designee, or Agency addresses a document incorrectly, but the party receives the document, the time frame for filing an appeal shall begin as of the actual date of receipt by the party, whether or not the party receives the document within the appeal time frame set forth in subsection (a) of this section. However, this does not apply if the party fails to provide a current address or provides an incorrect address.

(c) A determination or decision mailed to a party shall be presumed to have been delivered if the document was mailed as specified in subsection (b) of this section.

(1) A determination or decision shall not be presumed to have been delivered:

(A) if there is tangible evidence of nondelivery, such as being returned to sender by the U.S. Postal Service; or

(B) if credible and persuasive evidence is submitted to establish nondelivery or delayed delivery to the proper address.

(2) If a party provides the Board or Agency with an incorrect mailing address, a mailing to that address shall be considered a proper mailing, even if there is proof that the party never received the document.

(d) A complaint or an appeal shall be in writing. Complaints or appeals may be filed electronically only if filed in a form approved by the Agency in writing. The filing date for a complaint or an appeal shall be:

(1) the postmarked date or the postal meter date (where there is only one or the other);

(2) the postmarked date, if there is both a postmark date and a postal meter date;

(3) the date the document was delivered to a common carrier, which is equivalent to the postmarked date;

(4) three business days before receipt by the Board or Agency, if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;

(5) the date of the document itself, if the document date is fewer than three days earlier than the date of receipt and if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;

(6) the date of the document itself, if the mailing envelope containing the complaint or appeal is lost after delivery to the Board or Agency. If the document is undated, the filing date shall be deemed to be three business days before receipt by the Board or Agency; or

(7) the date of receipt by the Board or Agency, if the document was filed by fax.

(e) Credible and persuasive testimony under oath, subject to cross-examination, may establish a filing date that is earlier than the dates established under subsection (d) of this section. A party shall be allowed to establish a filing date earlier than a postal meter date or the date of the document itself only upon a showing of extremely credible and persuasive evidence. Likewise, when a party alleges that a complaint or appeal has been filed that the Board or Agency has never received, the party must present extremely credible and persuasive evidence to support the allegation.

(f) A decision or determination shall not be deemed final if a party shows that a representative of the Board, Board's designee, or Agency has given misleading information on appeal rights to the party. The party shall specifically establish:

(1) how the party was misled; or

(2) what misleading information the party was given, and, if possible, by whom the party was misled.

(g) There is no good cause exception to the timeliness rules.

§823.4. Representation.

Each party may authorize a hearing representative to assist in presenting a complaint or an appeal on behalf of the party under this chapter. The Agency or Board may require authorization to be in writing. On behalf of the party, the hearing representative may exercise any of the party's rights under this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702711
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES

40 TAC §§823.10 - 823.14

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§823.10. Board-Level Complaints.

(a) Persons who may file a complaint include:

(1) Texas Workforce Center customers;

(2) other interested persons affected by the One-Stop Service Delivery Network, including subrecipients and eligible training providers; and

(3) previously employed individuals who believe they were displaced by a Texas Workforce Center customer participating in work-based services such as subsidized employment, work experience, or workfare.

(b) Complaints shall be in writing and filed within 180 days of the alleged violation.

(c) The complaint shall include:

(1) the party's name and current mailing address; and

(2) a brief statement of the alleged violation identifying the facts on which the complaint is based.

(d) Each Board shall ensure that information about complaint procedures is provided to individuals, eligible training providers, and subrecipients. The information provided shall be presented in such a manner as to be understood by the affected individuals, including youth, individuals with disabilities, and individuals with limited English proficiency. This information shall be:

(1) posted in a conspicuous public location at each Texas Workforce Center;

(2) provided in writing to any customer;

(3) made available in writing to any individual upon request; and

(4) placed in each Texas Workforce Center customer's file.

§823.11. Determinations.

(a) A determination affecting the type and level of services to be provided by a Board or its designee shall be promptly provided to any person directly affected.

(b) The determination shall include the following:

(1) A brief statement of the adverse action;

(2) The mailing date of the determination;

(3) An explanation of the individual's right to an appeal;

(4) The procedures for filing an appeal to the Board, including applicable time frames as required in §823.3;

(5) The right to have a hearing representative, including legal counsel; and

(6) The address or fax number to send the appeal.

(c) Boards shall allow providers of training services the opportunity to appeal a determination related to the:

(1) denial of eligibility as a training provider under WIA §122(b), §122(c), or §122(e);

(2) termination of eligibility as a training provider or other action under WIA §122(f); or

(3) denial of eligibility as a training provider of on-the-job or customized training by the operator of a Texas Workforce Center under WIA §122(h).

(d) A person that receives a determination from a Board or a Board's designee may file an appeal with the Board requesting a review of the determination. The appeal must be submitted in writing, filed within 14 calendar days of the mailing date of the determination, and include the party's proper mailing address.

§823.12. Board Informal Resolution Procedure.

(a) Boards shall provide an opportunity for informal resolution of a complaint or appeal.

(b) Informal resolution may include but is not limited to:

(1) informal meetings with case managers or their supervisors;

(2) second reviews of the case file;

(3) telephone calls or conference calls to the affected parties;

(4) in-person interviews with all affected parties; or

(5) written explanations or summaries of the laws or regulations involved in the complaint.

§823.13. Board Hearings.

(a) If the informal resolution procedure results in a final agreement between the parties, no hearing shall be held.

(b) If no final informal resolution is reached, Boards shall provide an opportunity for a hearing to resolve an appeal or complaint.

(c) Either a final agreement resulting from informal resolution or a hearing and Board decision shall be completed within 60 calendar days of the original filing of the appeal or complaint.

(d) Boards shall provide a process that allows an individual alleging a labor standards violation to submit a complaint to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the complaint so provides.

(e) Within 60 calendar days of the filing of the appeal or complaint, the Board shall send the parties a decision setting forth the results of the hearing. The decision shall be issued by a Board hearing officer, shall include findings of fact and conclusions of law, and shall provide information about appeal rights to the parties.

(f) If no Board decision is mailed within the 60 calendar-day time frame described in subsection (e) of this section or if any party

disagrees with a timely Board decision, a party may file an appeal with the Agency.

(g) An appeal to the Agency shall be filed in writing with TWC Appeals, Texas Workforce Commission, 101 East 15th St., Room 410, Austin, Texas 78778-0001, within 14 calendar days after the mailing date of the Board's decision. If the Board does not issue a decision within 60 calendar days of the date of the filing of the original appeal or complaint, an appeal to the Agency must be filed no later than 90 calendar days after the filing date of the original appeal or complaint.

§823.14. Board Policies for Resolving Complaints and Appeals of Determinations.

(a) A Board shall establish written policies to handle complaints and appeals of determinations, provide the opportunity for informal resolution, and conduct hearings in compliance with this subchapter for individuals, eligible training providers, and other persons affected by the One-Stop Service Delivery Network, including subrecipients.

(b) A Board shall maintain written copies of these policies, and make them available to the Agency, Texas Workforce Center customers, and other interested persons upon request. A Board shall require that its subrecipients provide these policies to Texas Workforce Center customers and other interested persons upon request.

(c) At a minimum, a Board shall develop and approve policies to:

(1) ensure that determinations are provided as specified in §823.11;

(2) ensure that information about complaint procedures is available as described in §823.10(d);

(3) notify persons that complaints must be submitted in writing and set forth the facts on which the complaint is based, and notify them of the time limit in which to file a complaint;

(4) maintain a complaint log and all complaint-related materials in a secure file for a period of three years;

(5) designate an individual to be responsible for investigation, documentation, monitoring, and following up on complaints;

(6) inform persons of the:

(A) right to file a complaint;

(B) right to appeal a determination;

(C) opportunity for informal resolution and a Board hearing;

(D) time frame in which to either reach informal resolution or to issue a Board decision; and

(E) right to file an appeal to the Agency, including providing information on where to file the appeal;

(7) designate hearing officers to conduct Board hearings, document actions taken, and render decisions; and

(8) ensure that complaints remanded from the Agency to the Board for resolution are handled in a timely fashion and follow established Board policies and time frames.

(d) Complaints filed directly with the Agency may be remanded to the appropriate Board to be processed in accordance with the Board's policies for resolving complaints.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702712
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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SUBCHAPTER C. AGENCY COMPLAINT AND APPEAL PROCEDURES

40 TAC §§823.20 - 823.27

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§823.20. State-Level Complaints.

(a) A Texas Workforce Center customer or other interested person affected by the statewide One-Stop Service Delivery Network, including service providers that allege a noncriminal violation of the requirements of any federal- or state-funded workforce services, may file a complaint with the Agency.

(b) Complaints shall be in writing and filed within 180 calendar days of the alleged violation. The complaint shall include the party's name, current mailing address, and a brief statement of the alleged violation identifying the facts on which the complaint is based.

(c) The complaint shall be filed with TWC Appeals, Texas Workforce Commission, 101 East 15th St., Room 410, Austin, Texas 78778-0001.

(d) The Agency shall provide an opportunity for informal resolution.

(e) If the informal resolution procedure results in a final agreement between the parties, no hearing shall be held.

(f) If no final informal resolution is reached, the complaint shall be promptly set for a hearing and a decision shall be issued in accordance with the procedures for appeals under this subchapter.

(g) Complaints filed directly with the Agency may be remanded to the appropriate Board to be processed in accordance with the Board's hearing policies.

§823.21. Setting a Hearing.

(a) A WIA-funded training provider or other provider certified by the Agency and later found to be ineligible to receive funding as a training provider may file an appeal directly with the Agency.

(b) Upon receipt of an appeal from a Board decision, an appeal pursuant to subsection (a) of this section, or if no informal resolution of a complaint is successfully reached pursuant to §823.20, the Agency shall promptly assign a hearing officer and mail a notice of hearing to the parties and/or their designated representatives. The hearing shall be set and held promptly and in no case later than as provided by applicable statute or rule.

(c) The notice of hearing shall be in writing and include a:

(1) statement of the date, time, place, and nature of the hearing;

(2) statement of the legal authority under which the hearing is to be held; and

(3) short and plain statement of the issues to be considered during the hearing.

(d) The notice of hearing shall be issued at least 10 calendar days before the date of the hearing unless a shorter period is permitted by statute.

(e) Hearings shall be conducted by telephonic means, unless an in-person hearing is required by applicable statute or the Agency determines that an in-person hearing is necessary.

(f) Parties needing special accommodations, including the need for a bilingual or sign language interpreter, shall make this request before the hearing is set, if possible, or as soon as practical.

§823.22. Postponement and Continuance.

(a) The hearing officer may grant a postponement of a hearing for good cause at a party's request. Except in emergencies or unusual circumstances confirmed by a telephone call or other means, no postponements shall be granted within two days of the scheduled hearing.

(b) A continuance of a hearing may be ordered at the discretion of the hearing officer if:

(1) there is insufficient evidence upon which to make a decision;

(2) a party needs additional time to examine evidence presented at the hearing;

(3) the hearing officer considers it necessary to enter into evidence additional information or testimony;

(4) an in-person hearing is necessary for proper presentation of the evidence; or

(5) any other reason deemed appropriate by the hearing officer.

(c) The hearing officer shall advise the parties of the reason for the continuance and of any additional information required. At the continuance, the parties shall have an opportunity to rebut any additional evidence.

§823.23. Evidence.

(a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Exchange of Exhibits. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. Any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties and a copy shall be provided to the hearing officer in advance of the hearing. Any documentary evidence to be presented at an in-person hearing shall be exchanged at the hearing.

(c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to relevant facts. The hearing officer may decide the appeal on the basis of such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.

(d) Experts and Evaluations. If relevant and useful, testimony from an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency may be ordered by hearing officers, on their own motion or at a party's request. Any such expert or evaluation shall be at the expense of one of the parties.

(e) Subpoenas.

(1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.

(2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.

(3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.

(4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.

§823.24. Hearing Procedures.

(a) General Procedure. All hearings shall be conducted de novo. The hearing shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. The hearing officer shall develop the evidence. All issues relevant to the appeal shall be considered and addressed.

(1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing.

(2) Examination of Witnesses and Parties. The hearing officer shall examine parties and any witnesses and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.

(3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.

(4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual, including a party, who fails to correct behavior the hearing officer identifies as disruptive. After an expulsion, the hearing officer may proceed with the hearing and render a decision.

(b) Records

(1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.

(2) The hearing record shall be maintained in accordance with federal or state law.

(3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.

§823.25. Withdrawal of Complaint or Appeal.

A party may request a withdrawal of its own complaint or appeal at any time before a final Agency decision is issued. The hearing officer may grant the request for withdrawal in writing and issue an order of dismissal.

§823.26. Hearing Officer Independence and Impartiality.

(a) A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding the handling of any issues during the pendency of a case and in issuing their written decisions.

(b) A hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination or Board decision on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.

(c) A hearing officer may withdraw from a hearing to avoid the appearance of impropriety or partiality.

(d) Following any disqualification or withdrawal of a hearing officer, the Agency shall assign an alternate hearing officer to the case. The alternate hearing officer shall not be bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.

§823.27. Ex Parte Communications.

(a) The hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte communications with the hearing officer on behalf of any interested person or party.

(b) If the hearing officer receives any such ex parte communication, the other parties shall be given an opportunity to review that communication.

(c) Nothing shall prevent the hearing officer from communicating with parties or their representatives about routine matters such as requests for continuances or opportunities to inspect the file.

(d) The hearing officer may initiate communications with an Agency employee who has not participated in a hearing or any determination in the case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702713

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Earliest possible date of adoption: August 12, 2007

For further information, please call: (512) 475-0829

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SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS

40 TAC §§823.30 - 823.33

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§823.30. Hearing Decision.

(a) Following the conclusion of the hearing, the hearing officer shall promptly issue a written decision on behalf of the Agency.

(b) The Agency decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing. The Agency decision shall include:

(1) a list of the individuals who appeared at the hearing;

(2) the findings of fact and conclusions of law reached on the issues; and

(3) the affirmation, reversal, or modification of a determination or Board decision.

(c) Unless a party files a timely motion for rehearing, the Agency may assume continuing jurisdiction to modify or correct a hearing decision until the expiration of 14 calendar days from the mailing date of the hearing decision.

§823.31. Motion for Reopening.

(a) If a party does not appear for an Agency hearing, the party has the right to request a reopening of the hearing within 14 calendar days from the date the Agency decision is mailed.

(b) The motion shall be in writing and detail the reason for failing to appear at the hearing.

(c) The hearing officer may schedule a hearing on whether to grant the reopening.

(d) The motion may be granted if it appears to the hearing officer that the party has shown good cause for failing to appear at the hearing.

§823.32. Motion for Rehearing and Decision.

(a) A party has 14 calendar days from the date the decision is mailed to file a motion for rehearing. A rehearing may be granted only for the presentation of new evidence.

(b) Motions for rehearing shall be in writing and allege the new evidence to be considered. The appellant must show a compelling reason why this evidence was not presented at the hearing.

(c) If the hearing officer determines that the alleged, new evidence warrants a rehearing, a rehearing shall be scheduled at a reasonable time and place.

(d) The hearing officer shall issue a written decision following the hearing.

(e) The hearing officer may also issue a decision denying a motion for rehearing.

§823.33. Finality of Decision.

(a) The decision of the hearing officer is the final decision of the Agency after the expiration of 14 calendar days from the mailing date of the decision unless within that time:

(1) a request for reopening is filed with the Agency;

(2) a request for rehearing is filed with the Agency; or

(3) the Agency assumes continuing jurisdiction to modify or correct a decision.

(b) Any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency shall be final on the expiration of 14 calendar days from the mailing date of the decision, modification, or correction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702714
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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CHAPTER 841. WORKFORCE INVESTMENT ACT

The Texas Workforce Commission (Commission) proposes the repeal of the following sections of Chapter 841 relating to the Workforce Investment Act (WIA):

Subchapter C, Training Provider Certification, §841.48 and §841.49

Subchapter D, Local Area Grievance Procedure, §§841.61 - 841.69

Subchapter E, State Level Hearing, §§841.91 - 841.93 and 841.95 - 841.96

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed rule change is to establish detailed and consistent procedures for complaints, hearings, and appeals related to workforce services administered by Local Workforce Development Boards (Boards). Texas Labor Code §302.065 requires that the Commission integrate the administration of multiple federal block grant programs and identify policy changes that support this integration. The Commission expanded this integration to state-funded workforce services, including examining the existing complaints and appeals processes for workforce services administered by the Boards. An absence of unified and integrated rules on complaints, hearings, and appeals related to workforce services makes the existing rules difficult to understand or interpret consistently and works as a barrier to integrating workforce services.

To maintain uniformity and consistency across all Board-administered workforce services and to protect due process rights of Texas Workforce Center customers, in a separate, but concurrent, rulemaking proposal, the Commission is proposing the repeal of Chapter 823, General Hearings rules, and is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals rules. New Chapter 823 requires Boards to establish local policies related to filing complaints, to provide opportunities for informal resolutions, and to establish procedures for Board hearings and appeals.

The Commission has reviewed sections of Chapter 841 relating to complaints or grievances, local-level appeals, and state-level hearings. The Commission proposes to repeal these sections and incorporate similar processes related to complaints, hearings, and appeals in new Chapter 823, including the complaints and appeals process that is currently established in the Workforce Investment Act (WIA) regulations at 20 C.F.R. §667.600 and §667.640.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER C. TRAINING PROVIDER CERTIFICATION

The Commission proposes amendments to Subchapter C, as follows:

Under a separate, but concurrent, rulemaking proposal, the Commission is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals, which comprises the complaint, hearing, and appeal procedures for all Board-administered workforce services, including the information in the following sections.

§841.48. Local Appeals

Section 841.48, procedures established by Boards for appeals requested by eligible training providers found by the Boards to be ineligible to receive WIA funding for training services, is repealed and the information is relocated in new Chapter 823.

§841.49. State Level Appeals

Section 841.49, procedures established by the Agency for appeals requested by eligible training providers found by the Agency to be ineligible to receive WIA funding for training services, is repealed and the information relocated in new Chapter 823.

SUBCHAPTER D. LOCAL AREA GRIEVANCE PROCEDURE

The Commission proposes the repeal of Subchapter D, as follows:

Under a separate, but concurrent, rulemaking proposal, the Commission is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals, which comprises the complaint, hearing, and appeal procedures for all Board-administered workforce services, including the information in the following sections.

§841.61. Purpose and Coverage

Section 841.61, procedures for resolving allegations of violations of the requirements of WIA in the operation of local WIA programs and activities, is repealed and the information is relocated in new Chapter 823.

§841.62. Grievance Filing Procedures at the Local Level

Section 841.62, grievance procedures established by the Board to notify any participant or other affected party alleging a violation of the requirements of WIA at the local level of the right to file a complaint, is repealed and the information is relocated in new Chapter 823.

§841.63. Time Limitations at Local Level

Section 841.63, the length of time required to file a complaint alleging noncriminal violations of the requirements of WIA, is repealed and the information is relocated in new Chapter 823.

§841.64. LWDB Responsibilities

Section 841.64, responsibilities of the Boards regarding grievance procedures, is repealed and the information is relocated in new Chapter 823.

§841.65. Local Level Informal Conference Procedure

Section 841.65, Board requirements regarding informal resolutions, is repealed and the information is relocated in new Chapter 823.

§841.66. Local Level Hearing Procedure

Section 841.66, Board requirements to establish local hearing procedures for parties dissatisfied with the results of an informal conference, is repealed and the information is relocated in new Chapter 823.

§841.67. Written Decision

Section 841.67, requirements for hearing officers to provide a written decision to all parties to a complaint, is repealed and the information is relocated in new Chapter 823.

§841.68. Remedies

Section 841.68, remedies that may be imposed as enumerated at WIA §181(c)(3), is repealed and the information is relocated in new Chapter 823.

§841.69. Appeal

Section 841.69, procedures for filing an appeal to the Agency if a party is dissatisfied with the results of a local level hearing, is repealed and the information is relocated in new Chapter 823.

SUBCHAPTER E. STATE LEVEL HEARING

The Commission proposes amendments to Subchapter E, as follows:

Under a separate, but concurrent, rulemaking proposal, the Commission is proposing new Chapter 823, Integrated Complaints, Hearings, and Appeals, which comprises the complaint, hearing, and appeal procedures for all Board-administered workforce services, including the information in the following sections.

§841.91. Scope

Section 841.91, related to the scope of this subchapter, is repealed and the information is relocated in new Chapter 823.

§841.92. Review Procedure for Appeals Made Under §841.69

Section 841.92, procedures established by the Agency to select an impartial hearing officer to review the record to determine if a party was afforded a process that was held in compliance with WIA and local grievance procedures, is repealed and the information is relocated in new Chapter 823.

§841.93. State Level Informal Resolution and Hearing for Alleged Violations of the Requirements of WIA by the State or for Complaints by Individuals Affected by the Statewide Program

Section 841.93, Agency requirements to establish procedures for state level informal resolutions and hearings for alleged violations of the requirements of WIA by the state or for complaints by individuals affected by the statewide program, is repealed and the information is relocated in new Chapter 823.

§841.95. Referral of Local Complaints

Section 841.95, complaints arising under Subchapter D and made directly to the Commission, is repealed and the information is relocated in new Chapter 823.

§841.96. Appeal to Secretary of Labor

Section 841.96, appeals made to the Secretary of Labor pursuant to 20 C.F.R. §§667.610, 667.640, 667.645, and 667.650, is repealed and the information is relocated in new Chapter 823.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide a unified and streamlined process regarding the resolution of complaints, hearings, and appeals related to Board-administered workforce services. In addition, due process principles and other legal rights will be protected, program outcomes will be achieved more effectively, and workforce services will be further integrated.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER C. TRAINING PROVIDER CERTIFICATION

40 TAC §841.48, §841.49

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§841.48. Local Appeals.

§841.49. State Level Appeals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702715
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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SUBCHAPTER D. LOCAL AREA GRIEVANCE PROCEDURE

40 TAC §§841.61 - 841.69

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§841.61. Purpose and Coverage.

§841.62. Grievance Filing Procedures at the Local Level.

§841.63. Time Limitations at Local Level.

§841.64. LWDB Responsibilities.

§841.65. Local Level Informal Conference Procedure.

§841.66. Local Level Hearing Procedure.

§841.67. Written Decision.

§841.68. Remedies.

§841.69. Appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702716
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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SUBCHAPTER E. STATE LEVEL HEARING

40 TAC §§841.91 - 841.93, 841.95, 841.96

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§841.91. Scope.

§841.92. Review Procedure for Appeals Made Under §841.69.

§841.93. State Level Informal Resolution and Hearing for Alleged Violations of the Requirements of WIA by the State or for Complaints by Individuals Affected by the Statewide Program.

§841.95. Referral of Local Complaints

§841.96. Appeal to Secretary of Labor

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702717
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 475-0829

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §1.4

The Texas Department of Transportation (department) proposes amendments to §1.4 concerning public access to commission meetings.

EXPLANATION OF PROPOSED AMENDMENTS

Historically, the Texas Transportation Commission (commission) awarded transportation funds on a project-by-project basis. Delegations composed of local government leaders or members of local organizations from around the state came before the commission to make presentations about the transportation needs of their geographical areas and to seek funding for local transportation projects. In 2002, the commission began to simplify the project planning process and has shifted a significant amount of the transportation decision making authority to local community leaders. This shift changed the way the department analyzes transportation projects and allocates funding across the state. The department reduced its 34 funding categories to 12. Eight of the new categories have direct local input. The changes have resulted in local leaders having more input in the selection of projects for which transportation funds are allocated. The commission now has the sole discretion to select projects in only one of the twelve categories (Category 12 - Strategic Priority) and funds in that category are used for projects that generally promote economic development and opportunity, provide system continuity with adjoining states and Mexico, increase efficiency on military deployment routes, implement the pass-through financing program, or address other strategic needs as determined by the commission.

Transportation Code, §201.802, requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission. Section 1.4 was adopted to address that requirement and subsection (d) of that section provides the framework for delegations to appear before the commission. The procedure provided by subsection 1.4(d) is necessarily complex and takes significant resources of the delegation and the department. It requires a delegation to file a written petition at least three months before the requested appearance date (in contrast to 20 days for a request from an individual under subsection 1.4(c)) and requires the district in which the project is located to review the petition and file a report with the executive director. The change in the planning and funding of transportation projects has all but eliminated the necessity for delegations to present their proposed transportation projects to the commission.

The purpose of the amendment to §1.4 is to reflect the effects of the policy changes made by the commission and to streamline the process for the addition of commission agenda items. A person who currently is required to follow the delegation procedure will have, after the rule change, the opportunity to request the addition of an agenda item under subsection 1.4(c) or the opportunity to address the commission during the open comment period under subsection 1.4(e) (redesignated as subsection 1.4(d) by this amendment).

Amendments to §1.4(b) remove language that is made unnecessary by the deletion of subsection (d) and change a cross reference affected.

Amendments to §1.4(c) remove language that is unnecessary because of the deletion of subsection (d). Additionally, the amendment gives the commission chair (chair), rather than the department, the discretion to place an item on the commission's agenda if the chair determines that the item is within the commission's jurisdiction and concerns a matter of significant public interest. Under Transportation Code, §201.054, the chair is responsible for overseeing the preparation of the commission meeting agenda and this amendment brings the rule in line with the statute.

Section 1.4(d), which provides the procedure for a delegation of representatives of a local government or group to appear before the commission concerning a transportation project, is deleted.

Subsections 1.4(e) - (i) are renumbered as the result of the repeal of former subsection 1.4(d) and subsection 1.4(e) is amended to change a cross reference.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the section as proposed.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Jackson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the streamlining of public meetings and hearings. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.4 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 13, 2007.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.802, which requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.054 and §201.802.

§1.4. Public Access to Commission Meetings.

(a) (No change.)

(b) Posted agenda items. A person may speak before the commission on any matter on a posted agenda [~~, other than a presentation by a delegation under subsection (d) of this section,~~] by submitting a request, in a form and manner as prescribed by the department, prior to the matter being taken up by the commission. A person speaking before the commission on an agenda item will be allowed an opportunity to speak:

(1) prior to a vote by the commission on the item; and

(2) for a maximum of three minutes, except as provided in subsection (g)(6) [~~(h)(6)~~] of this section.

(c) New agenda items.

(1) A person may request the addition of [~~, other than a delegation under subsection (d) of this section, may request the department to add~~] an item to the commission agenda by submitting, no less than 20 days prior to the date which has been set for the next meeting, the following information:

(A) the name and address of the person making the request;

(B) a clear and concise statement of the subject of the proposed agenda item; and

(C) a brief summary of the action sought.

(2) If the chair [~~department~~] determines that the proposed item is within the jurisdiction of the commission and that the proposed item concerns a matter in which there is sufficient public interest to warrant consideration by the commission as an agenda item, the chair may place the matter [~~, the matter will be placed~~] on the posted agenda for the next or a subsequent meeting, consistent with available time. [~~If the proposed item concerns a matter that has appeared on the posted agenda of a commission meeting during the previous six months, the request may be denied or deferred for consideration at the discretion of the department and the commission.~~]

[~~(d) Delegations.~~]

[~~(1) Petition. A delegation consisting of the representatives of one or more local governments or of an organization of two or more persons may petition the department to appear before the commission to seek commission action on a maximum of three specific transportation projects, or on the general transportation needs for a specific geographical area.~~]

[~~(2) Content of petition. A petition filed under this subsection must be in writing, directed to the department's district office of the district in which the project is located, and must be received by the chief executive officer in charge of the district (district engineer) no less than 90 days prior to the date of the requested appearance. The petition must include:~~]

[~~(A) the name and address of the petitioner;~~]

[~~(B) a statement that the petitioner desires to appear on the petitioner's own behalf or as the representative of a named organization or local government;~~]

[~~(C) a clear and concise statement of the subject of the proposed presentation;~~]

[~~(D) a brief summary of the action sought;~~]

[~~(E) a brief description of known or potential adverse impacts on the environment;~~]

[~~(F) the name and address of each opponent, if any, to the proposed action or relief sought; and~~]

[~~(G) a statement of the applicable metropolitan planning organization's position and endorsement, if any, of the project or projects.~~]

[~~(3) Highway projects. A delegation requesting action on a highway project must submit with the petition a letter containing:~~]

[~~(A) project limits;~~]

[~~(B) an estimate of the cost of the project;~~]

[~~(C) a description of the existing facility (if any);~~]

[~~(D) a description of the requested improvement;~~]

[~~(E) proposed local government participation (city, county) for:~~]

[~~*(i)* right-of-way;~~]

[~~*(ii)* utility adjustments;~~]

[~~*(iii)* environmental mitigation;~~]

[~~*(iv)* construction; and~~]

[~~*(v)* other project components; and~~]

[~~(F) any proposed participation in the project by other public or private entities.~~]

[~~(4) District review. The district will review the petition and advise the delegation if any additional information is necessary. The district will submit to the executive director the petition followed by a report containing background information, the district's analysis, and district recommendations.~~]

[~~(5) Opposition. The department will notify any opponents identified in a petition filed under this subsection or who may be otherwise known to the department. An opponent will be afforded an opportunity to appear before the commission as provided in paragraph (6)(A) of this subsection.~~]

[~~(6) Presentation.~~]

[~~(A) Except as provided in subsection (h)(6) of this section, a delegation will be allowed to speak for a maximum of 20 minutes on a maximum of three projects prioritized by the delegation or on the general transportation needs for a specific geographical area, and opponents will be allowed to follow the presentation of the delegation with a presentation not to exceed a total of 20 minutes.~~]

[~~(B) Other than elected public officials, no more than three persons may speak for a delegation.~~]

(d) [~~(e)~~] Open comment period.

(1) At the conclusion of the posted agenda of each regular business meeting the commission will allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is under the jurisdiction of the commission.

(2) A person desiring to appear under this subsection must complete a registration form, as provided by the department, prior to the beginning of the open comment period.

(3) Except as provided in subsection (g)(6) [~~(h)(6)~~] of this section, each person will be allowed to speak for a maximum of three minutes for each presentation in the order in which he or she registered.

(e) [~~(f)~~] Disability accommodation. Persons with disabilities who have special communication or accommodation needs and who plan to attend a meeting may contact the office of the secretary to the commission in Austin. Requests should be made at least two days before a meeting. The department will make every reasonable effort to accommodate these needs.

(f) [~~(g)~~] Notice. For each commission meeting an agenda will be filed with the Texas Register in accordance with the requirements of the Open Meetings Act, Government Code, Chapter 551.

(g) [~~(h)~~] Conduct and decorum. The commission will receive public input as authorized by this section, subject to the following guidelines.

(1) Questioning of those making presentations will be reserved to commissioners and the department's administrative staff.

(2) Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

(3) Presentations shall remain pertinent to the issue being discussed.

(4) A person who disrupts a meeting must leave the meeting room if ordered to do so by the chair.

(5) Time allotted to one speaker may not be reassigned to another speaker.

(6) The time allotted for presentations or comments under this section may be increased or further limited by the chair, or, in the chair's absence, the acting chair, as may be appropriate to assure opportunity for the maximum number of persons to appear.

(h) [~~(i)~~] Waiver. Subject to the approval of the chair, a requirement of this section may be waived in the public interest if necessary for the performance of the responsibilities of the commission or the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702744
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 463-8683

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CHAPTER 21. RIGHT OF WAY
SUBCHAPTER B. UTILITY ADJUSTMENT, RELOCATION, OR REMOVAL

43 TAC §21.23

The Texas Department of Transportation (department) proposes amendments to §21.23, concerning state participation in toll-related utility relocations.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §203.092, provides that the department and a utility equally share the cost of the relocation of a utility facility required by the improvement of a toll-related facility. Section 203.092 limits the cost-sharing arrangement to relocations that are made before September 1, 2007 and expire on that date. Accordingly, §21.23 currently limits reimbursement to eligible relocation costs that are actually incurred before September 1, 2007. Senate Bill 1209, 80th Legislature, Regular Session, 2007, which took effect May 17, 2007, amended Transportation Code, §203.092, to extend the cost-sharing arrangement to toll-related utility relocations made before September 1, 2013 and to extend the expiration date of the applicable statutory provisions to that date. The amendments to §21.23 are consistent with the changes made by Senate Bill 1209.

The amendment to §21.23(d)(2) changes the expiration date for state reimbursement for utility relocations on toll-related projects from September 1, 2007 to September 1, 2013.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments as proposed.

John Campbell, Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Campbell has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to further the department's mission to provide an efficient, timely, cost effective and fair process of adjusting utility facilities required by improvements to the state highway system. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §21.23 may be submitted to John Campbell, Director, Right of Way Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 13, 2007.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.095, which directs the department to adopt rules to implement Transportation Code, Chapter 203, Subchapter E concerning relocation of utility facilities required by improvements to the state highway system.

CROSS REFERENCE TO STATUTE

Transportation Code, §203.092.

§21.23. State Participation in Toll-Related Relocations.

(a) - (c) (No change.)

(d) Eligible relocation costs.

(1) (No change.)

(2) The department will reimburse 50% of eligible relocation costs that are actually incurred prior to September 1, 2013 [~~2007~~]. Relocation costs incurred on or after that date [~~September 1, 2007~~] will not be reimbursed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702745

Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 12, 2007
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §402.305

The Texas Lottery Commission withdraws the proposed new §402.305 which appeared in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10500).

Filed with the Office of the Secretary of State on June 26, 2007.

TRD-200702664
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: June 26, 2007
For further information, please call: (512) 344-5113

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER E. REGULATED HERBICIDES

4 TAC §7.52, §7.53

The Texas Department of Agriculture (the department) adopts amendments to §7.52 concerning counties regulated, and §7.53 concerning county special provisions for the use of regulated herbicides, without changes to the proposal published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2343). The amendments are adopted to make changes to the regulations necessitated by orders entered by the county commissioner courts of counties subject to the regulations.

The amendment to §7.52 delete Bexar county from the list of counties regulated. The amendments to § 7.53 make changes to the county special provisions by changing county special provisions for Hall County and Jackson County.

No comments were received on the proposal.

The amendments to §7.52 and §7.53 are adopted under the Texas Agriculture Code (the Code) §76.144, which provides that the Texas Department of Agriculture with the authority to adopt rules concerning the use of regulated herbicides in a county in which the commissioners court has entered an order in accordance with the Texas Agriculture Code §76.144(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 2007.

TRD-200702790
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: July 22, 2007
Proposal publication date: April 27, 2007
For further information, please call: (512) 463-4075

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CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) adopts amendments to §20.1 concerning definitions and to §20.20 and §20.22 concerning stalk destruction requirements and deadlines, without changes to the proposed text, as published in the May 18, 2007, issue of the *Texas Register* (32 TexReg 2741). Amendments are adopted to define one term, update definitions of certain terms, divide pest management zone 7 into two areas, and modify the earliest planting dates and dates when cotton may be hostable in pest management zones.

Amendments to §20.1 are adopted to add the term "new crop" and to correct a typographical error. This section is amended to make it consistent with changes adopted in §20.22 and to strengthen enforcement of the program by assuring clear terminology.

Amendments to §20.20 are adopted in response to a request from the Cotton Producer Advisory Committee in Pest Management Zone 7. The adopted change divides Pest Management Zone 7 into two areas with separate deadlines. This section is amended to ensure sufficient time for producers in all parts of Zone 7 to harvest and destroy their cotton. This reduces the need for producers in the northern part of Zone 7 to request extensions of the stalk destruction deadline under normal circumstances, while allowing producers in the southern part of Zone 7 to enforce a stalk destruction deadline appropriate for their area.

The amendments to §20.22 are adopted in response to requests from the Cotton Producer Advisory Committees of Pest Management zones 1, 2 and 9. The adopted amendments promote suppression of boll weevil populations by separating the end of the enforcement period for cotton stalk destruction from the earliest planting date. This allows enforcement to continue in a zone until near the time when current year cotton planted on or after the earliest planting date becomes hostable. The stalk destruction chart at §20.22(a) adds a column for earliest plant date and a column for end date of destruction requirements.

No comments were received on the proposal.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §20.1

The amendments to §20.1 are adopted in accordance with the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702783

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: July 19, 2007
Proposal publication date: May 18, 2007
For further information, please call: (512) 463-4075

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SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.20, §20.22

The amendments to §20.20 and §20.22 are adopted in accordance with the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702784
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: July 19, 2007
Proposal publication date: May 18, 2007
For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.10

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line edition of the July 13, 2007, issue of the Texas Register.)

The Texas State Library and Archives Commission adopts amended §6.10, concerning a revised, fourth edition of the Texas State Records Retention Schedule, with changes to the figure in §6.10. The proposal was published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2438).

The Texas State Library and Archives Commission, under authority of Government Code §441.185(f), may establish mandatory minimum retention periods for any records of state agencies that are not established by another federal or state law, regulation, or rule of court. The commission has revised the Texas State Records Retention Schedule based on comment from its users and a re-appraisal of the role and function of certain records maintained by state agencies since the adoption of the third edition of the schedule. The new edition furthers defines the meaning of "after completed" with regard to several of the records series listed; changes made in response to the wish of state agencies for clarification. The new edition also strengthens the admonition that a state record may not be destroyed if there is pending litigation, a public information request, an audit, or a related action involving the record, even if the retention period for the record has expired.

State agencies are required under Government Code §441.185 to submit records retention schedules to the state records administrator for approval by the director and librarian. The adoption of the fourth edition of the Texas State Records Retention Schedule will simplify the means by which state agencies fulfill their statutory duties. The strengthened prohibition on the destruction of records involved in pending litigation or similar actions protects the interests of the public and the state.

No comments were received concerning adoption of the rule.

The amended section is adopted under Government Code §441.185(f) that permits the commission to adopt minimum retention periods for state records and under Government Code §441.199 that gives the commission authority to adopt rules affecting the state's management and preservation of records.

§6.10. Texas State Records Retention Schedule.
A record listed in the Texas State Records Retention Schedule (4th Edition) must be retained for the minimum retention period indicated by any state agency that maintains a record of the type described.
Figure: 13 TAC §6.10

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702779
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: September 1, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 463-5459

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.403

The Public Utility Commission of Texas (commission) adopts an amendment to §26.403, relating to the Texas High Cost Universal Service Plan (THCUSP) without changes to the proposed text as published in the April 27, 2007 issue of the *Texas Register* (32 TexReg 2347).

This rule amendment is necessary and appropriate in order to allow the commission to determine in a contested proceeding, the appropriate eligible lines to be supported, and the benchmark or benchmarks to be used to calculate the support from the THCUSP, based upon current information and conditions in the telecommunications industry, law, and policy.

The amendment deletes existing rule language as to the specific eligible lines to be supported and the specific methodology of determining benchmarks. With the flexibility provided to the commission by this amendment, after notice and opportunity for hearing, the commission will determine which eligible lines should receive support under this section and will also determine benchmark(s) to be used to calculate the support amounts from the THCUSP. This amendment is adopted under Project Number 34060.

A public hearing, if requested, was scheduled for Monday, June 4, 2007. No request for the public hearing was received; therefore, no public hearing was conducted.

The commission received initial comments on the proposed amendment from AT&T Texas, Verizon Southwest, and Texas Cable & Telecommunications Association and Time Warner Telecom of Texas, L.P. (Coalition) and reply comments from Embarq and the Coalition. A summary of the stakeholders' filed comments and commission responses are set forth hereafter.

All parties filing comments supported the amendments to this section; however, parties sought clarifications of the amendments. The commentors expressed approval of the proposed amendments to the rule and approval of the flexibility and range these amendments afforded the commission in the subsequent contested proceeding in which benchmarks and lines to be supported by the THCUSP will be determined. The Coalition noted that the proposed amendments would remedy any constraints that the current rule language might impose on the commission's ability to decide and implement policy changes, and urged expeditious adoption.

AT&T Texas, Verizon, and Embarq expressed concern that the effect of this rulemaking may create a risk of invalidating the current THCUSP and disrupting the support flows to the eligible telecommunications providers (ETPs) who receive support from the THCUSP. Verizon noted that it is reasonable to assume that whatever changes are made will be prospectively implemented upon issuance of a final order in the follow-on substantive proceeding. These commentors requested that language be included in either the Adoption Order in this project or in the rule amendment that clarifies the continuation of the *status quo* pending notice and opportunity for hearing on the substantive issues. AT&T specifically requested that the commission clarify that ETPs be permitted to continue to submit their monthly claims for reimbursement pursuant to the Texas Universal Service Fund (TUSF) rules currently in effect until the commission provides notice and opportunity for a hearing on any possible changes.

Commission response

Notwithstanding changes to §26.403, all companies currently participating in the THCUSP operate under, and are subject to, the provisions of the Final Order in Docket Number 18515 until such time as, after notice and opportunity for hearing, the order from Docket Number 18515 is superseded by a subsequent commission order.

In reply comments, the Coalition agreed with AT&T and Verizon that the commission must provide notice and an opportunity for a hearing prior to implementing any change in the THCUSP and that such changes must be prospective, not retroactive. However, the Coalition noted that such requirement for notice and opportunity for hearing would be satisfied at the conclusion of Phase I of a contested case. Therefore, the Coalition disagreed with the concept that the commission must wait until it has issued a final order in the future contested case to implement changes to the support amounts disbursed pursuant to the THCUSP. The Coalition also urged the commission to make decisions that affect the policies of §26.403 during Phase 1 of the future contested proceeding.

Commission response

Decisions regarding what may or may not be implemented by the commission during a contested proceeding are unrelated to this rule change, and would be addressed in the context of the contested proceeding. Also, the administrative schedule for the forthcoming contested proceeding has yet to be established. Decisions regarding how many phases there will be in the contested case, and what issues are covered at what point in the contested case, will be made in the contested case proceeding.

The Coalition argued that the commission's decisions in the TUSF contested case may eventually require further revisions to this section in order to conform the final language of the rule to the policy, cost methodology, and other determinations made by the commission in the contested case. The Coalition pointed out this fact because it believed that these initial changes should not be interpreted as precluding or otherwise hampering the commission's ability to make policy changes in the contested case that may ultimately require additional rule changes.

Commission response

It would be premature at this time to stipulate *a priori* regarding results from the future proceeding and any potential impact on this Rule. The commission will make any changes to this rule section as necessary in the future, based on the outcome of the contested proceeding. The amendments to this rule broaden the guidelines regarding the THCUSP, and therefore enhance the commission's ability to make policy changes in a subsequent contested case, rather than hamper them.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically, PURA §56.021 which requires the commission to adopt and enforce rules to establish a universal service fund to assist local exchange companies in providing basic local telecommunications services at reasonable rates in high cost rural areas of the state.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and 56.021.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702693
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 17, 2007
Proposal publication date: April 27, 2007
For further information, please call: (512) 936-7223

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PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission adopts an amendment to §301.1, concerning Definitions without changes to the proposed text as published in the April 13, 2007, issue of the *Texas Register* (32 TexReg 2085).

The amendment to §301.1(b)(46) changes the term "odds board" to "tote board" and amends the definition of race meeting under §301.1(b)(59).

The Commission proposed the amendment in conjunction with its review of Chapter 301, Definitions, in accordance with Government Code, §2001.039. As a result of the amendment, the definitions will be clearer and will more closely align with industry standard terms.

The Commission received no comments in response to the proposed amendment.

The amendment is adopted under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing and rules to administer the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 2007.

TRD-200702659
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 16, 2007
Proposal publication date: April 13, 2007
For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER B. TREATMENT OF HORSES

16 TAC §§319.102, 319.108, 319.111

The Texas Racing Commission adopts amendments to §319.102 and §319.111 and adopts new §319.108 without changes to the proposed text as published in the April 13, 2007, issue of the *Texas Register* (32 TexReg 2086).

The Commission proposed the amendments and new rule in conjunction with the Commission's review of Chapter 319, Veterinary Practices and Drug Testing, under Government Code, §2001.039.

The change to §319.102 clarifies that, for the purpose of removing a horse from the veterinarian's list, the commission will accept the report of a satisfactory workout or examination conducted by a commission veterinarian employed by a pari-mutuel regulatory authority outside of Texas.

New §319.108 regulates the use of Extracoporeal Shock Wave Therapy and Radial Pulse Wave Therapy. The provisions of this new rule are consistent with the provisions of the Association of Racing Commissioners International's model rule regarding these therapies.

The changes to §319.111 accomplish five purposes.

First, §319.111(a)(1) is amended by the insertion of the word "occurs." This is a technical correction only.

Second, the creation of new §319.111(a)(2) provides an opportunity for a trainer to seek reconsideration of a commission veterinarian's diagnosis of an EIPH event.

Third, the changes to §319.111(e) align the requirements for withdrawing from the furosemide program to match the requirements for entering the program. In addition, they will paperwork and streamline the process of withdrawing horses from the furosemide program.

Fourth, the change to §319.111(f)(2) corrects a typographical error.

Finally, the changes to §319.111(g) clarify the minimum lengths of time that a horse will remain on the veterinarian's list after Exercise Induced Pulmonary Hemorrhage events. The changes to §319.111(g) do not change the substance of the existing rule, but only present the rule in a format that is easier to understand.

The Commission received no comments in response to the proposed amendments and new rule.

The amendments and new rule are adopted under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing and rules to administer the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 2007.

TRD-200702660
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 16, 2007
Proposal publication date: April 13, 2007
For further information, please call: (512) 833-6699

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SUBCHAPTER C. TREATMENT OF GREYHOUNDS

16 TAC §§319.202 - 319.204

The Texas Racing Commission adopts amendments to §§319.202 - 319.204 without changes to the proposed text as published in the April 13, 2007, issue of the *Texas Register* (32 TexReg 2086).

The Commission proposed the amendments in conjunction with the Commission's review of Chapter 319, Veterinary Practices and Drug Testing, under Government Code, §2001.039.

The change to §319.202(b) provides the commission veterinarian with the flexibility of notifying either the owner or the trainer that the veterinarian is placing one of the kennel's greyhounds on the veterinarian's list.

The changes to §319.203 distinguishes between the monitoring efforts and the inspection efforts made by commission veterinarians at greyhound racetracks. The proposed changes reflect the different natures of these efforts and the different timetables. In addition, the changes to §319.203 specify how often kennels should be inspected.

The change to §319.204(c) deletes an ineffective reference to rules of the Texas Animal Health Commission (TAHC).

The Commission received no comments in response to the proposed amendments.

The amendments are adopted under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing and rules to administer the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 2007.

TRD-200702661
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 16, 2007
Proposal publication date: April 13, 2007
For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER C. REGULATION OF LIVE WAGERING
DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §321.313

The Texas Racing Commission adopts an amendment to §321.313, relating to the distribution of the pari-mutuel pool for winners of the Select Three, Four or Five wager without changes to the proposed text as published in the April 13, 2007, issue of the *Texas Register* (32 TexReg 2088).

This amendment will change the calculation of the Select Three pool to a "Profit Split" payout, meaning that the payouts in a dead heat will be weighted according to the actual amount of money wagered on the winning combinations. The amendment will not change the payouts for the Select Four or Five wagers.

The Commission received no comments in response to the proposed amendment.

The amendment is adopted under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing and rules to administer the Act, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 2007.

TRD-200702662
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 16, 2007
Proposal publication date: April 13, 2007
For further information, please call: (512) 833-6699

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES
SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.204

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.204 (relating to Prohibited Price Fixing), with changes to the proposed text as published in the April 20, 2007, issue of the *Texas Register* (32 TexReg 2227).

Prior to proposal of the rule, the Commission received extensive input from members of the Bingo Advisory Committee and other interested persons that there was a need for a rule providing guidance on Occupations Code, §2001.556, regarding prohibited price fixing. A workgroup composed of Commission staff and public members involved in charitable bingo identified, gathered, and reviewed information relevant to drafting a rule on price fixing. The proposed rule was a result of the workgroup's efforts. The purpose of the new rule is to provide information to manufacturers, distributors, and authorized organizations relating to Occupations Code, §2001.556, regarding prohibited price fixing. Licensees will benefit because the new rule provides clarification on matters related to prohibited price fixing.

A public comment hearing was held on May 2, 2007. There were no members of the public present at the hearing. One written comment was received during the comment period. The Commission also considered the comments submitted for a previously proposed rule related to price fixing. The earlier proposal was withdrawn.

The Bingo Interest Group and others commented in support of the proposed rule.

Two comments concerned the definition of "supplier" in subsection (a)(3). One comment stated that the definition of "supplier" should not be adopted because it makes no sense, is not men-

tioned elsewhere, and will be difficult to enforce. The second comment stated that, if the definition is included, it should be used also in the definition of vertical price fixing because it is used in the definition of horizontal price fixing; however, the definition should be removed because it will cause trouble and does not enhance the rule.

Agency Response: The definition of "supplier" enhances the rule because it provides guidance on the meaning of the term "supplier" in Occupations Code, §2001.556, regarding prohibited price fixing. "Supplier" is used in an example included in the definition of "horizontal price fixing." The examples in the definition of "vertical price fixing" do not need to mirror those given in the definition of "horizontal price fixing." The Commission has modified the definition of "supplier" to include those with an interest of 10% or greater, rather than 5% or greater, to be consistent with the provisions in Occupations Code, §2001.203 and §2001.208, that require an applicant for a manufacturer or distributor's license to include information pertaining to each person owning 10% or more of a class of stock.

A comment made a drafting suggestion on subsection (c)(7) for clarification.

Agency Response: The Commission agrees and has changed "this paragraph and" to "this subsection or" in subsection (c)(7).

The new section is adopted under Occupations Code, §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

§402.204. Prohibited Price Fixing.

(a) Definitions.

(1) horizontal price fixing--a price fixing agreement:

(A) between competitors on the same level of distribution, such as a price fixing agreement between two or more bingo equipment or supplies manufacturers; or

(B) between two or more bingo equipment or supplies distributors; or

(C) between two or more suppliers.

(2) price fixing agreement--an express or implied agreement to fix, set, control, maintain, or stabilize prices at any level.

(3) supplier--a licensed or unlicensed manufacturer or distributor of bingo equipment or supplies or any person, group, or entity with an ownership interest of 10% or greater in a manufacturer or distributor of bingo equipment or supplies.

(4) vertical price fixing--a price fixing agreement between parties on different levels of the same chain of distribution regarding the price that one of the parties will charge further down the distribution chain, such as an agreement between a bingo equipment or supplies manufacturer and a bingo equipment or supplies distributor regarding the price that the bingo equipment or supplies distributor will charge to the licensed authorized organization.

(b) Horizontal Price Fixing Prohibited.

(1) Horizontal price fixing agreements are prohibited.

(2) Evidence of uniform prices or exchange of past or historical price information alone shall not be sufficient to establish a violation of paragraph (1) of this subsection or Texas Occupations Code §2001.556.

(c) Vertical Price Fixing Prohibited.

(1) Vertical price fixing agreements are prohibited.

(2) Each distributor shall have full discretion in setting the distributor's sales or lease prices for bingo equipment or supplies to authorized organizations.

(3) A manufacturer may not set or control the sales or lease price that a distributor charges a licensed authorized organization for bingo equipment or supplies.

(4) A manufacturer may not set a minimum price on any sales or lease price that a distributor charges a licensed authorized organization for bingo equipment or supplies.

(5) A manufacturer may not prohibit a distributor from offering price discounts, rebates, credits, promotional allowances, or any other arrangement affecting the price paid by the purchaser or lessee of bingo equipment or supplies, to a licensed authorized organization.

(6) A manufacturer may not terminate a distributor's contract for failure to charge the manufacturer's suggested retail price.

(7) Discussions, suggestions, or the exchange of information between a manufacturer and a distributor regarding the sales or lease price charged by a distributor to a licensed authorized organization are not, in and of themselves, violations of this subsection or Texas Occupations Code §2001.556, so long as the distributor retains discretion to establish its sales or lease price to licensed authorized organizations.

(8) Nothing in Texas Occupations Code §2001.556 shall prevent a manufacturer and distributor from negotiating or establishing the sales or lease price that the distributor will pay to the manufacturer for bingo equipment or supplies.

(d) It is not a defense to horizontal or vertical price fixing that the fixed or agreed upon price is reasonable.

(e) Recordkeeping Requirements. Manufacturers and distributors shall retain contracts, invoices or other documents sufficient to show wholesale and retail pricing information for a period of three years. This documentation shall be made available to the Commission upon request, in accordance with §2001.216, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702685
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Effective date: July 17, 2007
Proposal publication date: April 20, 2007
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SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §402.300

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.300 (relating to Pull-Tab Bingo) with changes to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10495).

Prior to the proposal of amendments to 16 TAC §402.300 (relating to Pull-Tab Bingo), the Commission received comments, sug-

gestions, and questions about manufacture, style of play, flexibility in sale of pull-tabs by licensed authorized organizations, accountability, and related matters pertaining to pull-tab games from members of the Bingo Advisory Committee and other persons involved in charitable bingo. In response, the Commission adopted these amendments to: (1) provide manufacturers with more specific information on pull-tab ticket construction and packaging standards; (2) provide information on a new jackpot pull-tab game; (3) provide for additional flexibility and accountability for sale and redemption of pull-tab tickets; (4) clarify permissibility of video confirmation of winners; and (5) clarify existing language. Licensees will benefit because the adopted amendments will provide licensees with additional information to assist them in remaining in compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

The Commission received comments on the proposed rule. The Board of Texas Charity Advocates and the Bingo Interest Group supported adoption of the proposed rule. The Christian Life Commission of the Baptist General Convention was against adoption of the rule. The National Association of Fundraising Ticket Manufacturers commented against some provisions of the proposed rule. Numerous other comments supported the proposed rule in its entirety, and several others raised questions or concerns about some provisions.

Some comments expressed concern that the proposed amendments relating to "video confirmation" and "digital representation" caused confusion and would permit an expansion of gambling.

Agency Response: The Commission does not have the statutory authority to expand gambling or authorize slot machines, gambling devices, or, more specifically, electronic pull-tab bingo, as that term was described by Senate Floor Amendment No. 24 to HB 3, 79th Regular Legislative Session. A recent Texas Attorney General's Opinion, GA-541 (2007) concluded that the constitutional authorization for charitable bingo does not include "electronic pull-tab bingo," as described by Floor Amendment No. 24. Therefore, the adopted amendments can not and do not authorize slot machines, gambling devices, or electronic pull-tab bingo. By providing that video confirmation shall be subject to Commission approval, the adopted rule amendment clarifies that, although video confirmation is permissible, the Commission retains oversight authority. The adopted rule amendment further clarifies that video confirmation is a graphic and dynamic representation of the outcome of a bingo event ticket that will have no effect on the result of the winning or losing event ticket.

The references to "digital representation" have been deleted so that the Commission may conduct further review to consider developing guidelines for permissible use of digital representation. The rule as adopted does not include in subsection (a)(3) the proposed language ", or digital representation".

Comments stated that the definitions of "face" and "reverse" should be retained and expressed concern that allowing required information to be printed on the back of the ticket could create problems if some or all of the information were removed as tabs are torn off.

Agency Response: The Commission agrees. The definitions for "face" and "reverse" are retained in subsections (a)(3) and (15) and subsequent paragraphs are renumbered accordingly. In addition, language in subsections (a)(6), (b)(2), (b)(3)(B), (C), (D), (E), and (F) requiring information to be on the face of a pull-tab ticket is retained.

Comments suggested adding language that would permit a manufacturer to sell games in the State contemporaneously with the submittal of the sample deal because the approval process is time consuming and causes significant delays for distributors and manufacturers.

Agency Response: The Commission disagrees and has determined that no pull-tab game should be available in Texas until it has undergone complete testing and received final approval in accordance with Occupations Code, §2001.056(b). Section 2001.056(b) provides that a "license holder may not use or distribute a bingo card unless the card has been approved by the commission."

Comments suggested including an approval time frame of five to seven days to give the manufacturers and distributors certainty as to when a decision on a game would be issued.

Agency Response: Although the Commission agrees that a five to seven day approval time is reasonable in most cases, the Commission needs flexibility to manage fluctuations in workload. During the past six months, the Commission has approved new product submissions within three to five days of receipt with rare exceptions. Inclusion of a time frame in the rule would necessitate limiting the number of products submitted during a given period of time in order to ensure compliance with the time frame requirement.

A comment stated that the proposed amendment to subsection (d)(6) seems to eliminate the requirement that a flare accompany each deal.

Agency Response: The Commission did not intend to eliminate the requirement that a flare accompany each deal and has inserted new language in subsection (d)(6) for clarification. The succeeding paragraphs have been renumbered accordingly.

One comment stated that the jackpot pull-tab game language would allow for types of pull-tab games that would absolutely destroy traditional bingo.

Agency Response: Jackpot pull-tab is another style of pull-tab bingo game, and its prize payouts must be within statutory limits. The Commission has no information to indicate the jackpot pull-tab game would destroy traditional bingo. Additionally, the comments did not provide an explanation or basis for such a conclusion.

One comment stated: "Lottery Commissioner Tom Clowe publicly stated his support for 'link games', 'prize maximum increase' and 'electronic pull tabs' and discussed the possibility of having to recuse himself from any future discussions on this subject before the Commission. . . . These public statements concerning subjects contemplated in this proposed rule, raises concern on at least the appearance of Commissioner Clowe's ability to be objective on the merits of this rule. . . . Please provide rationale and justification for Commissioner Tom Clowe's participation and or recusal from decisions on issues before the Commission that involve bingo link games, bingo prize maximum increase, and bingo electronic pull tabs."

Agency Response: The rule does not address link games, prize maximum increase, and electronic pull-tabs. Moreover, Commissioner Clowe has no personal or private interest of any type in decisions related to the proposed rule except as a Commissioner performing his duties as set out in the statutes. Therefore, there is no basis or justification for recusal by Commissioner Clowe.

One comment suggested that a distributor should be required to take back disapproved pull-tab tickets and give credit for them to the licensed authorized organizations so that organizations are not burdened with pull-tabs that are not allowed to be sold.

Agency Response: Purchase agreements between a distributor and licensed authorized organization are private contractual matters that the Commission does not regulate.

A comment stated that subsection (e)(9) should be modified to allow a licensed authorized organization to use its own form to record required information about the sale of pull-tab tickets.

Agency Response: The Commission agrees and has deleted language in subsection (e)(9) requiring use of a form prescribed by the Commission.

A comment stated that the word "winning" should not be deleted from subsection (g)(5) because keeping a winning pull-tab is proof that it has been paid.

Agency Response: The Commission disagrees. "Winning" is not needed because subsection (g)(5) states that all "redeemed" pull-tab bingo tickets must be retained. Redeemed tickets are winning tickets.

One comment stated that charities not involved in a unit should be able to sell their pull-tabs in either session.

Agency Response: The Commission agrees and provides for this in subsection (e)(4) as proposed and adopted so long as the licensed authorized organization conducts bingo on two consecutive sessions within one twenty-four hour period.

The amendments are adopted under Occupations Code, §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

§402.300. Pull-Tab Bingo.

(a) Definitions. The following words and terms, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Ball Draw--A pulling of a bingo ball(s) to determine the winner of an event ticket by either the number or color on the ball(s).

(2) Deal--A separate and specific game of pull-tab bingo tickets of the same serial number and form number.

(3) Face--The front of a pull-tab bingo ticket, which displays the artwork of a specific game. The front of the pull-tab bingo ticket includes, but is not limited to, the name of the game, the price of the game and the payout structure of the game.

(4) Flare--A poster or placard that must display:

(A) a form number of a specific pull-tab bingo game;

(B) the name of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amounts of the pull-tab bingo game; and

(F) the name of the manufacturer or trademark.

(5) Form Number--The unique identification number assigned by the manufacturer to a specific pull-tab bingo game. A form number may be numeric, alpha, or a combination of numeric and alpha characters.

(6) High Tier--The two highest paying prize amounts as designated on the face of the pull-tab bingo ticket and on the game's flare.

(7) Last Sale--The purchaser of the last pull-tab bingo ticket(s) sold in a deal with this feature is awarded a prize or a registration for the opportunity to win a prize.

(8) Merchandise--Any non-cash item(s) provided to a licensed authorized organization that is used as a prize.

(9) Wheels--Devices that determine event ticket winner(s) by a spin of a wheel.

(10) Pay-Out--The total sum of all possible prize amounts in a pull-tab bingo game.

(11) Payout Schedule--A printed schedule prepared by the manufacturer that displays:

(A) the name of the pull-tab bingo game;

(B) the form number of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amount or jackpot for each category of the pull-tab bingo game;

(F) the number of winners for each category of prize;

(G) the profit of the pull-tab bingo game;

(H) the percentage of payout or the percentage of profit of the pull-tab bingo game; and

(I) the payout(s) of the pull-tab bingo game.

(12) Payout Structure--The printed information that appears on the face of a pull-tab bingo ticket. This display shows the winnable prize amounts, the winning patterns required to win a prize, and the number of winners for each category of prize.

(13) Prize--An award of collectible items, merchandise, cash, bonus pull-tabs, and additional pull-tab bingo tickets, individually or in any combination.

(14) Prize Amount--The value of cash and/or the fair market value of merchandise which is awarded as a prize. A collectable item is considered merchandise for determining allowable prize amounts. If a manufacturer or distributor supplies a merchandise prize, the manufacturer or distributor must determine the fair market value of the merchandise prize, otherwise the fair market value of a merchandise prize must be determined by the authorized organization.

(15) Reverse--The back of a pull-tab bingo ticket that has a perforated break-open tab(s) that when opened reveals one or more numbers and/or symbols that appear under the tab(s).

(16) Serial Number--The unique identification number assigned by the manufacturer identifying a specific deal of pull-tab bingo tickets. A serial number may be numeric, alpha, or a combination of numeric and alpha characters.

(17) Subset--A part of a deal that is played as a game to itself or combined with more subsets and played as a game. Each subset may be designed to have:

(A) a designated payout; or

(B) a series of designated payouts. Subsets must be of the same form and serial number to have a combined designated payout or a series of designated payouts.

(18) Symbol--A graphic representation of an object other than a numeric or alpha character.

(19) Video Confirmation--A graphic and dynamic representation of the outcome of a bingo event ticket that will have no effect on the result of the winning or losing event ticket.

(b) Approval of pull-tab bingo tickets.

(1) A pull-tab bingo ticket may not be sold in the state of Texas, nor furnished to any person in this state nor used for play in this state until that pull-tab bingo ticket has received approval for use within the state of Texas by the Commission. The manufacturer at its own expense must present their pull-tab bingo ticket to the Commission for approval.

(2) All pull-tab bingo ticket color artwork with a letter of introduction including style of play must be presented to the Commission's Austin, Texas location for review. The manufacturer must submit one complete color positive or hardcopy set of the color artwork for each pull-tab bingo ticket and its accompanying flare. The color artwork may be submitted in an electronic format prescribed by the Commission in lieu of the hardcopy submission. The submission must include the payout schedule. The submission must show the face and reverse sides of a pull-tab bingo ticket and must be submitted on an 8 1/2" x 11" size sheet. The color artwork will show the actual size of the ticket and a 200% size of the ticket. The color artwork will clearly identify all winning and non-winning symbols. The color artwork will clearly identify the winnable patterns and combinations.

(3) The color artwork for each individual pull-tab bingo ticket must:

(A) display in no less than 26-point diameter circle, an impression of the Commission's seal with the words "Texas Lottery Commission" engraved around the margin and a five-pointed star in the center;

(B) contain the name of the game in a conspicuous location on the face of the pull-tab bingo ticket;

(C) contain the form number assigned by the manufacturer in a conspicuous location on the face of the pull-tab bingo ticket;

(D) contain the manufacturer's name or trademark in a conspicuous location on the face of the pull-tab bingo ticket;

(E) disclose the prize amount and number of winners for each prize amount, the number of individual pull-tab bingo tickets contained in the deal, and the cost per pull-tab bingo ticket in a conspicuous location on the face of the pull-tab bingo ticket;

(F) display the serial number where it will be printed in a conspicuous location on the face of the pull-tab bingo ticket. The color artwork may display the word "sample" or number "000000" in lieu of the serial number;

(G) contain graphic symbols that preserve the integrity of the Commission. The Commission will not approve any pull-tab bingo ticket that displays images or text that could be interpreted as depicting alcoholic beverages, weapons, profane language, provocative, explicit or derogatory images or text. All images or text are subject to final approval by the Commission; and

(H) be accompanied with the color artwork of the pull-tab bingo tickets reverse side along with a list of all other colors that will be printed with the game.

(4) Upon approval of the color artwork, the manufacturer will be notified by the Commission to submit one deal, for testing. The deal must be submitted for testing to the Commission at the manufacturers own expense. If necessary, the Commission may request that additional deals be submitted for testing.

(5) If the color artwork is approved and the pull-tab bingo deal(s) pass the Commission's testing, the manufacturer will be notified of the approval. This approval only extends to the specific pull-tab bingo game and the specific form number cited in the Commission's approval letter. If the pull-tab bingo ticket is modified in any way, with the exception of the serial number, index color, or trademark(s), it must be resubmitted to the Commission for approval. Changes to symbols require only an artwork approval from the Commission.

(6) The Commission may require resubmission of an approved pull-tab bingo ticket at any time.

(c) Disapproval of pull-tab bingo tickets.

(1) Upon inspection of a pull-tab bingo ticket by the Commission and if it is deemed not to properly preserve the integrity or security of the Commission including compliance with the art work requirements of this rule, the Commission may disapprove a pull-tab bingo ticket. All pull-tab bingo tickets that are disapproved by the Commission will cease to be allowed for sale until such time as the manufacturer complies with the written instructions of the Commission, or until any discrepancies are resolved. Disapproval of and prohibition to use, purchase, sell or otherwise distribute such a pull-tab bingo ticket is effective immediately upon notice to the manufacturer by the Commission. Upon receipt of such notice, the manufacturer must immediately notify the distributor and the distributor must immediately notify affected licensed authorized organizations to cease all use, purchase, sale or other distribution of the disapproved pull-tab ticket. The distributor must provide to the Commission, within 15 days of the Commission's notice to the manufacturer, confirmation that the distributor has notified the licensed authorized organization that the pull-tab ticket has been disapproved and sale and use of the disapproved ticket must cease immediately.

(2) If modified by the manufacturer all disapproved pull-tab bingo tickets may be resubmitted to the Commission. No sale of disapproved tickets will be allowed until the resubmitted deal has passed security testing by the Commission. At any time the manufacturer may withdraw any disapproved pull-tab bingo tickets from further consideration.

(3) The Commission may disapprove a pull-tab bingo game at any stage of review, which includes artwork review and security testing, or at any time in the duration of a pull-tab bingo game. The disapproval of a pull-tab bingo ticket is administratively final.

(d) Manufacturing requirements.

(1) Manufacturers of pull-tab bingo tickets must manufacture, assemble, and package each deal in such a manner that none of the winning pull-tab bingo tickets, nor the location, or approximate location of any winning pull-tab bingo ticket can be determined in advance of opening the deal by any means or device. Nor should the winning pull-tab bingo tickets, or the location or approximate location of any winning pull-tab bingo ticket be determined in advance of opening the deal by manufacture, printing, color variations, assembly, packaging markings, or by use of a light. Each manufacturer is subject to inspection by the Commission, its authorized representative, or designee.

(2) All winning pull-tab bingo tickets as identified on the payout schedule must be randomly distributed and mixed among all other pull-tab bingo tickets of the same serial number in a deal regardless of the number of packages, boxes, or other containers in which the

deal is packaged. The position of any winning pull-tab bingo ticket of the same serial numbers must not demonstrate a pattern within the deal or within a portion of the deal. If a deal of pull-tabs is packed in more than one box or container, no individual container may indicate that it includes a winner or contains a disproportionate share of winning or losing tickets.

(3) Each deal of pull-tab bingo tickets must contain a packing slip inside the deal. This packing slip must substantiate the name of the manufacturer, the serial number for the specific deal, the date the deal was packaged, and the name or other identification of the person who packaged the deal.

(4) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal including a warning to the purchaser that the deal may have been tampered with if the package, box, or other container was received by the purchaser with the seal broken.

(5) Each deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container or be able to be viewed from the outside of the package, box or container.

(6) A flare must accompany each deal.

(7) The information contained in subsection (a)(3)(A), (B), (C), (D), and (F) of this section shall be located on the outside of each deal's sealed package, box, or other container.

(8) Manufacturers must seal or tape, with tamper resistant seal or tape, every entry point into a package, box or container of pull-tab bingo tickets prior to shipment. The seal or tape must be of such construction as to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

(9) All high tier winning instant pull-tab bingo tickets must utilize a secondary form of winner verification.

(10) Each individual pull-tab bingo ticket must be constructed so that, until opened by a player, it is substantially impossible, in the opinion of the Commission, to determine its concealed letter(s), number(s) or symbol(s).

(11) No manufacturer may sell or otherwise provide to a distributor and no distributor may sell or otherwise provide to a licensed authorized organization of this state or for use in this state any pull-tab bingo game that does not contain a minimum prize payout of 65% of total receipts if completely sold out.

(12) A manufacturer in selling or providing pull-tab bingo tickets to a distributor shall seal or shrink-wrap each package, box, or container of a deal completely in a clear wrapping material.

(13) Pull-tab bingo tickets must:

(A) be constructed of cardboard and glued or otherwise securely sealed along all four edges of the pull-tab bingo ticket and between the individual perforated break-open tab(s) on the ticket. The glue must be of sufficient strength and type so as to prevent the separation of the sides of a pull-tab bingo ticket;

(B) have letters, numbers or symbols that are concealed behind perforated window tab(s), and allow such letters, numbers or symbols to be revealed only after the player has physically removed the perforated window tab(s);

(C) prevent the determination of a winning or losing pull-tab bingo ticket by any means other than the physical removal of the perforated window tab(s) by the player;

(D) be designed so that the numbers and symbols are a minimum of 2.5/32 (5/64) inch from the dye-cut window perforations, except for a five window tab which may be 2/32 (4/64) inch from the dye-cut window perforations;

(E) be designed so that the lines or arrows that identify the winning symbol combinations will be a minimum of 5/32 inch from the open edge farthest from the hinge of the dye-cut window perforations;

(F) be designed so that highlighted "pay-code" designations that identify the winning symbol combinations will be a minimum of 3.5/32 inch from the dye-cut window perforations;

(G) be designed so that secondary winner protection codes appear in the left margin of the ticket, unless the secondary winner protection codes are randomly generated serial number-type winner protection codes. Randomly generated serial number-type winner protection codes will be randomly located in either the left or middle column of symbols and will be designed so that the numbers are a minimum of 3.5/32 inch from the dye-cut window perforations. Any colored line or bar or background used to highlight the winner protection code will be a minimum 3.5/32 (7/64) inch from the dye-cut window perforations; and

(H) have the Commission's seal placed on all pull-tab bingo tickets by only a licensed manufacturer.

(14) Wheels must be submitted to the Commission for approval. As a part of the approval process, the following requirements must be demonstrated to the satisfaction of the Commission:

(A) wheels must be able to spin at least four times with reasonable effort;

(B) wheels must only contain the same number or symbols as represented on the event ticket; and

(C) locking mechanisms must be installed on wheel(s) to prevent play outside the licensed authorized organization's licensed time(s).

(e) Sales and redemption.

(1) All winning pull-tab bingo tickets must be presented for payment during the licensed authorized organization's licensed times at which the pull-tab bingo ticket is available. Immediately upon payment a licensed authorized organization must punch a hole with a standard hole punch through or otherwise mark or deface each winning pull-tab bingo ticket of $25.00 or more.

(2) Except as provided by paragraph (3) or (4) of this subsection, a licensed authorized organization may sell or redeem pull-tab bingo tickets on the premises specified in its bingo license only:

(A) during the licensed authorized organization's licensed times; or

(B) during a required intermission between the bingo occasions of two licensed authorized organizations.

(3) For a licensed authorized organization that conducts bingo through a unit created and operated under Texas Occupations Code, Subchapter I-1, any organization in the unit may sell or redeem pull-tab tickets from a deal on the premises specified in their bingo licenses and during such licensed time until the deal is withdrawn under paragraph (6) of this subsection.

(4) For a licensed authorized organization that conducts bingo on consecutive occasions within one 24-hour period, the organization may sell or redeem pull-tab tickets from a deal during either occasion and during an intermission between the two bingo occasions.

(5) Licensed authorized organizations may not display or sell any pull-tab bingo ticket which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

(6) A licensed authorized organization may not withdraw a deal of pull-tab bingo tickets from play until the entire deal is completely sold out or all winning pull-tab bingo tickets of $25.00 prize winnings or more have been redeemed, or the bingo occasion ends.

(7) A licensed authorized organization may not commingle different serial numbers of the same form number of pull-tab bingo tickets.

(8) A licensed authorized organization may bundle pull-tab bingo tickets of different form numbers and may sell these bundled pull-tab bingo tickets during their licensed times.

(9) The licensed authorized organization's gross receipts from the sale of pull-tab bingo tickets must be included in the reported total gross receipts for the organization. Each deal of pull-tab bingo tickets must be accounted for in sales, prizes or unsold cards.

(10) A licensed authorized organization may use video confirmation to display the results of an event ticket pull-tab bingo game(s). Video confirmation will have no effect on the play or results of any ticket or game.

(f) Inspection. The Commission, its authorized representative or designee may examine and inspect any individual pull-tab bingo ticket or deal of pull-tab bingo tickets and may pull all remaining pull-tab bingo tickets in an unsold deal.

(g) Records.

(1) Any licensed authorized organization selling pull-tab bingo tickets must maintain a purchase log showing:

(A) the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets; and

(B) the name, address, and taxpayer number of the distributor from whom the pull-tab bingo tickets were purchased.

(2) Licensed authorized organizations must show the sale of pull-tab bingo tickets, prizes that were paid and the serial number of the pull-tab bingo tickets on the daily cash report. The aggregate total sales for the licensed authorized organization must be recorded on the cash register.

(3) Licensed authorized organizations must maintain a perpetual inventory of all pull-tab bingo games. They must account for all sold and unsold pull-tab bingo tickets and pull-tab bingo tickets designated for destruction. The licensed authorized organization will be responsible for the gross receipts, prizes and prize fee associated with the unaccounted for pull-tab bingo tickets.

(4) As long as a specific pull-tab bingo game serial number is in play, all records, reports, receipts and redeemed winning pull-tab bingo tickets of $25.00 or more relating to this specific pull-tab bingo game serial number must be retained on the licensed premises for examination by the Commission.

(5) If a deal is removed from play and marked for destruction then all redeemed and unsold pull-tab bingo tickets of the deal must be retained by the licensed authorized organization for a period of four years from the date the deal is taken out of play or until the destruction of the deal is witnessed by the Commission, its authorized representative or designee.

(6) Manufacturers and distributors must provide the following information on each invoice and other document used in connection with a sale of pull-tab bingo tickets:

(A) date of sale;

(B) quantity sold;

(C) cost per each deal of pull-tab bingo game sold;

(D) serial number of each pull-tab bingo game's deal;

(E) name and address of the purchaser; and

(F) Texas taxpayer number of the purchaser.

(7) All licensed organizations must retain these records for a period of four years.

(h) Style of Play. The following pull-tab bingo tickets are authorized by this rule. A last sale feature can be utilized on any pull-tab bingo ticket.

(1) Sign-up Board. A form of pull-tab bingo that is played with a sign-up board. Sign-up board tickets that contain a winning numeric, alpha or symbol instantly win the stated prize or qualify to advance to the sign-up board. The sign-up board that serves as the game flare is where identified winning sign-up board ticket holders may register for the opportunity to win the prize indicated on the sign-up board.

(2) Sign-up Board Ticket. A sign up board ticket is a form of pull-tab bingo played with a sign-up board. A single window or multiple windows sign-up board ticket reveals a winning (or losing) numeric, alpha or symbol that corresponds with the sign-up board.

(3) Tip Board. A form of pull-tab game where perforated tickets attached to a placard that have a predetermined winner under a seal.

(4) Coin Board. A placard that contains prizes consisting of coin(s). Coin boards can have a sign-up board as part of its placard.

(5) Coin Board Ticket. A form of pull-tab bingo that when opened reveals a winning number or symbol that corresponds with the coin board.

(6) Event Ticket. Pull-tab bingo tickets used as event tickets must contain more than two instant winners. Event ticket winner(s) are determined by some subsequent action such as a drawing of ball(s), spinning wheel, opening of a seal on a flare(s) or any other method approved by the Commission so long as that method has designated numbers, letters, or symbols that conform to the randomly selected numbers or symbols.

(7) Instant Ticket. A form of pull-tab bingo that have predetermined winners and losers and have immediate recognition of the winners and losers.

(8) Multiple Part Event or Multiple Part Instant Ticket. An event ticket that is broken apart and sold in sections by a licensed authorized organization. Each section of the ticket consists of a separate deal with its own corresponding payout structure, serial number, and winner verification.

(9) Jackpot Pull-Tab Game. A style of pull-tab game that has a stated prize and a chance at a jackpot prize(s). A portion of the stated payout is contributed to the jackpot prize(s). Each jackpot is continuous for the same form number and continues until a jackpot prize(s) is awarded; provided that any jackpot prize(s) must not exceed the statutory limits.

(10) Video Confirmation shall be subject to Commission approval.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2007.

TRD-200702686
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: July 17, 2007
Proposal publication date: December 29, 2006
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER C. EXAMINATION

22 TAC §1.52

The Texas Board of Architectural Examiners adopts an amendment to §1.52 for Title 22, Chapter 1, Subchapter C pertaining to a scholarship awarded to eligible architectural candidates to help defray the costs of the architectural registration examination pursuant to §1051.653, Texas Occupations Code Annotated. The proposal to amend this rule was published in the March 23, 2007, edition of the *Texas Register* (32 TexReg 1692). The amendment is being adopted without changes, and the text will not be republished.

The reason for the amendment is to limit the scholarship to those who are more clearly established as Texas residents and require candidates to apply for the scholarship within a reasonable time after passing the examination. The amendment limits the scholarship to candidates who have passed the architectural registration examination within 12 months prior to applying for the scholarship. There are also technical amendments made to update a statutory cross-reference and maintain consistent references to the board. Section 1.52 limits eligibility for the scholarship to those who have resided in Texas for 12 months. As amended, eligibility will be restricted to those who have resided in Texas for 18 months.

The agency received no comments concerning the proposal to amend this rule.

The amended rule is adopted pursuant to §1051.202 and §1051.653 of Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to adopt rules to administer and enforce its enabling legislation and to administer the award of scholarships, respectively.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702730
Cathy L. Hendricks, RID/ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 18, 2007
Proposal publication date: March 23, 2007
For further information, please call: (512) 305-8544

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.144

The Texas Board of Architectural Examiners (board) adopts an amendment to §1.144 of Title 22, Chapter 1, Subchapter H, pertaining to dishonest practice. The proposal to amend this rule was published in the December 29, 2006, edition of the *Texas Register* (31 TexReg 10504). The amendment is being adopted with changes.

The board made the following changes to §1.144(b) as proposed: As amended the adoption does not repeal a requirement that each architect include his or her registration number in certain advertisements of architectural services. As amended, the requirement remains in the adopted rule and the rule is unchanged.

The reason for the adopted amendment is to bar architects from seeking to be selected to render public work on the basis of the amount or the extent of goods and services granted to governmental entities. The prohibition upon rendering gratuitous goods and services during the procurement process is intended to secure the selection of design professionals upon qualifications and merit. The adopted amendment prohibits architects from giving plans, design services, or other goods and services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an architect to render publicly funded architectural work. The adopted amendment also specifies that an architect is subject to discipline for knowingly giving false testimony or receiving payment to render a particular opinion when serving as an expert witness.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.001(7)(F), Texas Occupations Code Annotated, which defines the term "practice of architecture" to include providing expert testimony for purposes of Chapter 1051, Texas Occupations Code Annotated, relating to the regulation of architecture; §1051.208, Texas Occupations Code Annotated, which requires the Board to adopt by rule standards of conduct for its registrants; and §1051.202, Texas Occupations Code Annotated, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities.

§1.144. Dishonest Practice.

(a) An Architect may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud,

(2) deceive, or

(3) create a misleading impression.

(b) An Architect may not advertise in a manner which is false, misleading, or deceptive. Each advertisement that offers the service

of an Architect in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Architect's Texas architectural registration number. If an advertisement is for a business that employs more than one Architect, only the Texas architectural registration number for one Architect employed by the firm or associated with the firm pursuant to section 1.122 is required to be displayed.

(c) An Architect may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded architectural work. An Architect may not give architectural plans, design services, pre-bond referendum services, or any other goods or services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an Architect to render publicly funded architectural work.

(d) An Architect serving as an expert witness is subject to discipline for committing a dishonest practice upon a finding by a court of law that the Architect:

(1) rendered testimony the Architect has actual knowledge is false; or

(2) agreed to receive payment contingent upon giving testimony that expresses a particular opinion.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702732
Cathy L. Hendricks, RID/ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 18, 2007
Proposal publication date: December 29, 2006
For further information, please call: (512) 305-8544

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SUBCHAPTER K. PRACTICE; ARCHITECT REQUIRED

22 TAC §1.212

The Texas Board of Architectural Examiners adopts an amendment to §1.212 for Title 22, Chapter 1, Subchapter K, pertaining to the services of a prime design professional in the design of certain publicly owned buildings. The proposal to amend this rule was published in the March 23, 2007, edition of the *Texas Register* (31 TexReg 1693). The amendment is being adopted without changes, and the text will not be republished.

The reason for the adopted amendment is to clarify that a person selected to serve as a prime design professional is not thereby permitted to practice outside the scope of his or her licensed profession in rendering architectural services on the projects listed in §1051.703(a). Section 1051.703(a), Texas Occupations Code Annotated, requires an architect to prepare the architectural plans and specifications for certain buildings owned by the state or a political subdivision of the state. Section 1051.703(b), Texas Occupations Code Annotated, reads "this section does not prohibit an owner of a building from choosing an architect or engineer as the prime design professional for a building construction, alteration, or addition project."

The agency received no comments concerning the proposal to amend this rule.

The amended rule is adopted pursuant to §1051.202 and §1051.208 of Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the standards of the practice of architecture, prohibitions upon the unlicensed practice of architecture and which require architectural plans and specifications for certain publicly owned buildings to be prepared by an architect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702733
Cathy L. Hendricks, RID/ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 18, 2007
Proposal publication date: March 23, 2007
For further information, please call: (512) 305-8544

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.144

The Texas Board of Architectural Examiners adopts an amendment to §3.144 of Title 22, Chapter 3, Subchapter H, pertaining to dishonest practice. The proposal to amend this rule was published in the December 29, 2006, edition of the *Texas Register* (31 TexReg 10507). The amendment is being adopted with changes.

The board made the following changes to §3.144(b) as proposed: As proposed, the section would have been amended to repeal a requirement that landscape architects include a registration number in certain advertising of landscape architecture. As amended, there is no change to §3.144(b). The requirement remains in place.

The reason for the amendment is to bar landscape architects from seeking to be selected to render public work on the basis of the amount or the extent of goods and services granted to governmental entities. The prohibition upon rendering gratuitous goods and services during the procurement process is intended to secure the selection of design professionals upon qualifications and merit. The amendment prohibits landscape architects from giving plans, design services, or other goods and services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select a landscape architect to render publicly funded landscape architectural work.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code Annotated, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities and §1051.208, Texas Occupations

Code Annotated, which requires the Board to adopt by rule standards of conduct for its registrants.

§3.144. Dishonest Practice.

(a) A Landscape Architect may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud,

(2) deceive, or

(3) create a misleading impression.

(b) A Landscape Architect may not advertise in a manner which is false, misleading, or deceptive. Each advertisement that offers the service of a Landscape Architect in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Landscape Architect's Texas landscape architectural registration number. If an advertisement is for a business that employs more than one Landscape Architect, only the Texas landscape architectural registration number for one Landscape Architect employed by the firm or associated with the firm pursuant to §3.122 is required to be displayed.

(c) A Landscape Architect may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded landscape architectural work. A Landscape Architect may not give landscape architectural plans, design services, pre-bond referendum services, or any other goods or services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select a Landscape Architect to render publicly funded landscape architectural work.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702734
Cathy L. Hendricks, RID/ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 18, 2007
Proposal publication date: December 29, 2006
For further information, please call: (512) 305-8544

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.154

The Texas Board of Architectural Examiners (board) adopts an amendment to §5.154 of Title 22, Chapter 5, Subchapter H, pertaining to dishonest practice. The proposal to amend this rule was published in the December 29, 2006 edition of the *Texas Register* (31 TexReg 10508). The amendment is being adopted with changes.

The board made the following changes to §5.154(b) as proposed: As proposed, the amendment would have repealed a requirement that interior designers include a registration number in certain advertising of interior design services. As amended, that requirement is not repealed and remains in effect. There is no amendment to §5.154(b).

The reason for the adopted amendment is to bar interior designers from seeking to be selected to render public work on the basis of the amount or the extent of goods and services granted to governmental entities. The prohibition upon rendering gratuitous goods and services during the procurement process is intended to secure the selection of design professionals upon qualifications and merit. The adopted amendment prohibits interior designers from giving plans, design services, or other goods and services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an interior designer to render publicly funded interior design work.

The agency received no comments concerning the proposal to amend this rule.

The amendments are adopted pursuant to §1051.202, Texas Occupations Code Annotated, which provides the board with general authority to promulgate rules necessary for the administration of its statutory responsibilities and §1051.208, Texas Occupations Code Annotated, which requires the board to adopt by rule standards of conduct for its registrants.

§5.154. Dishonest Practice.

(a) An Interior Designer may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud,

(2) deceive, or

(3) create a misleading impression.

(b) An Interior Designer may not advertise in a manner which is false, misleading, or deceptive. Each advertisement that offers the services of an Interior Designer in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Interior Designer's Texas interior design registration number. If an advertisement is for a business that employs more than one Interior Designer, only the Texas interior design registration number for one Interior Designer employed by the firm or associated with the firm pursuant to section 5.132 is required to be displayed.

(c) An Interior Designer may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded interior design work. An Interior Designer may not give Interior Design plans, design services, pre-bond referendum services, or any other goods or services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an Interior Designer to render publicly funded interior design work.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702735
Cathy L. Hendricks, RID/ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 18, 2007
Proposal publication date: December 29, 2006
For further information, please call: (512) 305-8544

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CHAPTER 7. ADMINISTRATION

22 TAC §7.10

The Texas Board of Architectural Examiners adopts an amendment to §7.10 for Title 22, Chapter 7, pertaining to fees charged by the agency. The proposal to amend this rule was published in the February 16, 2007 edition of the *Texas Register* (32 TexReg 605). The amendment is being adopted with changes.

The board made the following changes to §7.10 as proposed: a fee is imposed for renewal of emeritus registration for landscape architects and interior designers, the period for payment of expired fees is prolonged to two years from one. Both these changes implement recently adopted legislation. The fees for non-resident registrants remain the same and are not reduced as proposed. The rule is updated to reflect changes in examination fees which are imposed by the examination providers under contract with the agency.

The reason for the adopted amendment is to reduce the fees charged for renewal of registration, to reduce the fee charged for duplicate registration certificates, and to eliminate the fee charged for a duplicate pocket card certificate in order to align the agency's revenue with its reduced expenditures resulting from automation of agency functions and more efficient agency operations. The amendment increases the charges for the Landscape Architecture Registration Examination and the examination for registration as an interior designer because these fees are set by the examination providers which contract with the agency.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code Annotated, which grants the Board general authority to adopt rules to administer or enforce its enabling legislation; §1051.351, Texas Occupations Code Annotated, which requires payment of a renewal fee to renew a certificate of registration issued by the Board; §1051.357, Texas Occupations Code, which allows the Board to charge a registration renewal fee to an emeritus architect in an amount reasonable and necessary to recover the costs to administer emeritus registration; §1051.651, Texas Occupations Code Annotated, which allows the Board to set architectural registration renewal fees in an amount reasonable and necessary to cover administrative costs; §1052.054, Texas Occupations Code Annotated, which allows the Board to set a fee for board action, including renewal of landscape architectural registration renewal, in an amount reasonable and necessary to cover administrative costs of carrying out and enforcing laws relating to landscape architecture; and §1053.052, Texas Occupations Code Annotated, which allows the Board to set fees, including interior design registration renewal fees, in an amount reasonable and necessary to cover administrative costs of carrying out and enforcing laws relating to interior design.

§7.10. General Fees.

(a) FAILURE TO TIMELY PAY A REGISTRATION RENEWAL WILL RESULT IN THE AUTOMATIC CANCELLATION OF REGISTRATION BY OPERATION OF LAW.

(b) Effective September 1, 2007, the following fees shall apply to services provided by the Board in addition to any fee established elsewhere by the rules and regulations of the Board or by Texas law: Figure: 22 TAC §7.10(b)

(c) The Board cannot accept cash as payment for any fee.

(d) An official postmark from the U.S. Postal Service or other delivery service receipt may be presented to the Board to demonstrate the timely payment of any fee.

(e) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check, the fee shall be considered unpaid and any applicable late fees or other penalties accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(f) A Registrant who is in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service in the U.S. military. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702736
Cathy L. Hendricks, RID/ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 18, 2007
Proposal publication date: February 16, 2007
For further information, please call: (512) 305-8544

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.77

The Texas Board of Veterinary Medical Examiners adopts new §573.77 concerning Cease and Desist Procedures without changes to the proposed text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1195). The section reflects an amendment by the 79th Legislature to the Veterinary Licensing Act (Chapter 801, Occupations Code), which provides that the Governor shall appoint the presiding officer of the Board. Previously, the Board elected its president, along with the secretary and vice-president.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of §801.151(a) of the Veterinary Licensing Act, Occupations Code, which gives the Board authority to adopt rules necessary to administer the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702738

Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: July 19, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7563

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.25

The Texas Board of Veterinary Medical Examiners adopts amendments to §575.25 concerning Recommended Schedule of Sanctions without changes to the proposed text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1196). This section reflects amendments to the Veterinary Licensing Act (Chapter 801, Occupations Code) by the 79th Legislature which gives the Board the flexibility to consider a range of sanctions where a licensee has been convicted of a felony under §485.032, Health and Safety Code (re-numbered by the Legislature from §485.033) or Chapter 481 or 483 of the Health and Safety Code. Previously, any felony violations under those chapters and sections required a license suspension.

Section 575.25 includes in the Schedule of Sanctions for Class A violations a felony conviction. The section is expanded to allow the range of sanctions allowed by the Legislature under the Veterinary Licensing Act resulting from felony violations of §485.032, and Chapters 481 and 483 of the Health and Safety Code.

No comments were received regarding the amended section.

The amendments are adopted under the authority of §801.151(a) of the Occupations Code which gives the Board authority to adopt rules necessary to administer the Veterinary Licensing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702739
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: July 19, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7563

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER A. BOARD MEMBERS AND MEETINGS--DUTIES

22 TAC §577.1

The Texas Board of Veterinary Medical Examiners adopts amendments to §577.1 concerning Officers, without change to the proposed text as published in the March 9, 2007, *Texas Register* (32 TexReg 1197). The amendments reflect adoption by the 79th Texas Legislature of a requirement that the Governor appoint the presiding officer of the Board. Other officers are elected by the members of the Board and serve one-year terms.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of §801.151(a) of the Veterinary Licensing Act, Occupations Code, which gives the Board authority to adopt rules necessary to administer the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702740
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: July 19, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7563

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 80. CONTESTED CASE HEARINGS

SUBCHAPTER C. HEARING PROCEDURES

30 TAC §80.108

The Texas Commission on Environmental Quality (commission) adopts an amendment to §80.108 *without changes* to the proposed text in the February 23, 2007 issue of the *Texas Register* (32 TexReg 711) and therefore will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The amendment will provide the commission with the express authority to direct the executive director to participate as a party in contested case hearings regarding certain permit applications. The amendment would add subsection (m) which provides the commission with an option to direct the executive director to participate as a party in the types of hearings listed in subsections (a) and (c). Subsection (a) provides that the executive director shall not participate as a party in contested case hearings regarding permit applications for seven types of applications. Subsection (c) applies to applications not included in subsections (a) or (b) and provides that the executive director shall consider certain criteria in determining whether to participate as a party. This change will afford the commission the opportunity to benefit from the executive director's specialized knowledge by his participation in selected contested case hearings. The types of hearings in subsection (a) were included in the initial rulemaking because they were identified as less complex or not having unique conditions. However, experience has shown that technical and policy issues in these types of cases may warrant participation by the executive director as a party. It will also ensure that the administrative record is complete.

Prior to September 1, 2001, Texas Water Code, §5.228 required the executive director of the commission to participate as a party in all contested case hearings. As a result of public testimony received during its comprehensive review of the commission, the Sunset Advisory Commission recommended that the statute be changed to allow, rather than require, the executive director to participate in contested case permit hearings. The Sunset Advisory Commission also recommended that: 1) the role of the executive director be more clearly defined; 2) that the executive director be expressly prohibited from rehabilitating non-agency witnesses in permit hearings; and (3) that the commission adopt rules specifying the factors the executive director must take into account when considering whether to be a party in a permit hearing.

This recommendation was adopted in House Bill (HB) 2912, (77th Legislature, 2001) the Sunset Bill for the commission. Under HB 2912, Texas Water Code, §5.228 was amended to provide that the executive director is required to be a party in a contested case hearing only in a matter where the executive director bears the burden of proof (e.g., an enforcement proceeding). For permit hearings, the executive director may be a party only for the purpose of providing information to complete the administrative record. The commission is required to specify, by rule, the factors the executive director must consider in determining, on a case-by-case basis, whether to participate in a hearing as a party. Factors the commission must consider in developing these rules include: 1) the technical, legal, and financial capacities of the parties; 2) whether the parties have previously participated in a hearing; 3) the complexity of the issues; and 4) the available resources of commission staff. The executive director is expressly prohibited from rehabilitating the testimony of non-agency witnesses or from assisting an applicant in meeting its burden of proof unless that applicant fits a category of permit applicants that under commission rule are eligible for such assistance. The amendments to Texas Water Code, §5.228 took effect September 1, 2001, and apply only to hearings in which the executive director is named as a party on or after that date. Section 80.108 was one of the new rules adopted by the commission, effective November 15, 2001, implementing the revisions to Texas Water Code, §5.228.

SECTION DISCUSSION

Section 80.108 is amended by adding subsection (m) which provides an option for the commission to direct the executive director to participate as a party in the types of hearings listed in subsections (a) and (c).

In addition, cross-references in subsection (a)(4) and (5) are updated.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

"Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the adopted rulemaking is procedural in nature and establishes procedures for the executive director's participation as a party in contested case hearings on permitting matters, the rulemaking does not meet the definition of a major environmental rule.

In addition, even if the adopted rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopts a rule solely under the general powers of the agency. This amended rule does not exceed a standard set by federal law. This amended rule does not exceed an express requirement of state law because it is authorized by Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and Texas Water Code, §5.228, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. This amended rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.228, which expressly requires the commission to adopt rules necessary to specify the factors the executive director must consider in determining whether to participate as a party in a contested case permit hearing. This amended rule does not adopt a rule solely under the general powers of the agency, but rather under specific state law. Finally, this rulemaking is not adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

No comments were received regarding the Draft Regulatory Impact Analysis Determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rule and performed an analysis of whether Texas Government Code, Chapter 2007 is applicable. The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the adopted rule. Nevertheless, the commission further evaluated the adopted rule as to whether the rule constitutes a taking under Texas Government Code, Chapter 2007. The specific primary purpose of the adopted rule is to revise a commission rule to establish procedures for executive director party participation in certain contested case hearings as required by Texas Water Code, §5.228. The amended rule relates to when the executive director will participate as a party as directed to do so by the commission. The adopted rule will substantially advance this purpose by providing the commission the express authority to direct the executive director to participate as a party. Promulgation and enforcement of this rule will not affect private real property which is the subject of the rules because the adopted language relates to procedural matters relating to executive director party status rather than any substantive requirements.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program. No comments were received regarding the consistency of the rule with the CMP.

PUBLIC COMMENT

No comments were received.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.013, concerning General Jurisdiction of the commission, which establishes the commission's general authority to carry out its jurisdiction; §5.102, concerning the commission's General Powers, including calling and holding hearings and issuing orders; §5.103, concerning Rules, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and §5.228, which establishes the executive director's authority to participate in contested case hearings. Additionally, the amendment is adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders and Decisions, which requires state agencies to adopt rules of practice and procedure.

The amendment implements Texas Water Code, §5.228.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702755
Robert Martinez
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Effective date: July 19, 2007
Proposal publication date: February 23, 2007
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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (commission) adopts amendments to 30 TAC §114.1 and §114.270, and the repeal of §§114.4, 114.201, 114.202, and 114.618. Section 114.270 is adopted with changes to the text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1197). Sections 114.1, 114.4, 114.201, 114.202 and 114.618 are adopted without changes to the proposal and, therefore, will not be republished. The adopted revisions will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking aligns certain transportation-air quality rules and definitions with state and federal statutes by repealing the following rules: the Mobile Emission Reduction Credit (MERC) program and associated fund and definitions, the Light-Duty Motor Vehicle Purchase or Lease Incentive Program Vehicle Emissions Information Brochure, and the Transportation Control Measures (TCM) Substitution Process. These provisions were either repealed by state statute or superseded by federal statute.

The 1990 Federal Clean Air Act (FCAA) Amendments, §182(c)(4), required states to either adopt the Federal Clean Fuel Fleet (FCFF) program outlined in FCAA, §246, or implement a program that demonstrates long-term reductions in ozone-producing and toxic air emissions equal to those achieved under the FCFF program. The FCFF program requires federal, state, and local governments, and private fleets to purchase low-emission vehicles (LEVs) in areas classified by the EPA as being in serious, severe, or extreme nonattainment of the national ambient air quality standards (NAAQS) for ozone and carbon monoxide (CO).

The State of Texas, in a committal SIP revision submitted to the EPA on November 15, 1992, opted out of the FCFF program in order to implement a fleet emission control program designed by the state. In 1994 the commission submitted the state's opt-out program in a SIP revision to the EPA and adopted rules to implement the Texas Alternative Fuel Fleet (TAFF) program as a substitute to the FCFF program in the areas of Texas classified by EPA as being in serious, severe, or extreme nonattainment of the NAAQS for ozone or CO.

In 1995 the 74th Texas Legislature modified the state's alternative fuels program (Texas Health and Safety Code, Chapter 382, Subchapter F) through the passage of Senate Bill 200 (SB 200). The legislature facilitated fuel neutrality through the incorporation of the federal low emission vehicle (LEV) standards regardless of fuel type for certain affected fleets. The legislation required the commission to adopt regulations to implement the revised program. The commission adopted regulations that established the Texas Clean Fleet (TCF) program. In 1997 the 75th Texas Legislature further modified the state's alternative fuels program through the passage of Senate Bill 681 (SB 681). SB 681 removed the commission's authority to require the program in moderate nonattainment areas, limited the commission's authority to the serious and above ozone nonattainment areas, and modified the state's alternative fuels program. The basic requirement of LEV purchases was retained, but the implementation schedule was modified. SB 681 required the commission to adopt regulations to implement the program as modified by the legislation.

MERCs were part of the commission's TCF economic incentive program to help reduce vehicle emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x). The program was intended to provide additional flexibility for business, develop innovative strategies to control mobile source emissions, and reduce the cost of compliance with the FCAA. MERCs were enforceable, permanent, and quantifiable emission reductions generated by a mobile source through the TCF program. Emission reductions that remain after an entity satisfied their requirements could be banked as credits.

In 2005 the 79th Texas Legislature passed Senate Bill 1032 (SB 1032), which repealed TCF in its entirety. This action also repealed the MERC program, MERC fund, and corresponding definitions. On April 26, 2006, the commission adopted the repeal of the TCF program as directed by SB 1032. This rulemaking repeals the remaining program elements, including the MERC program.

In 2001 the 77th Texas Legislature (2001) passed Senate Bill 5 (SB 5) establishing the Texas Emission Reduction Plan (TERP), which provided financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development

programs. SB 5 programs were estimated to achieve reductions in excess of the reductions expected from the rules that were being repealed. In accordance with SB 5, the state implementation plan (SIP) was revised to replace certain rules with TERP. The adopted TERP rules established a state-wide incentive program for the purchase of new on-road diesel vehicles and light-duty motor vehicles that met emission standards more stringent than those required by federal requirements.

As a result of these new rules, a new §114.618 was adopted in August 2001, which required vehicle manufacturers to publish a brochure of eligible incentive vehicles by September 1 of each year. This brochure is also required to be submitted to the executive director, or his designee, by the same date.

House Bill 1365 (HB 1365) by the 78th Legislature (2003) repealed the requirement for vehicle manufacturers to publish and distribute a brochure annually. This adopted rulemaking repeals the rule implementing this requirement.

The federal surface transportation reauthorization act, the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU), established a transportation control measure substitution process, eliminating the requirement for an EPA-approved state process as found in 30 TAC §114.270(f), relating to the TCM Substitution Process. The federal SAFETEA-LU transportation control measure substitution process replaces and supersedes the state process. This adoption repeals the state section because it is no longer necessary. Because the federal process is largely based on the Texas process, no change is expected to occur in the state as a result of this revision.

SECTION BY SECTION DISCUSSION

The adoption amends, without changes from proposal, §114.1 in Subchapter A; and repeals §114.4 in Subchapter A; §114.201 and §114.202 in Subchapter F; and §114.618 in Subchapter K.

Subchapter A. Definitions

§114.1(13) and §114.4

The adoption amends §114.1 by repealing the definition of MERC in §114.1(13) and repeals the MERC definitions found in §114.4. These sections were elements of the TCF program, which was repealed by the commission on April 26, 2006, in accordance with SB 1032 following a repeal by the legislature in 2005, SB 1032. The legislative repeal made these program definitions no longer necessary. Current definitions in §114.1(14) - (18) will be renumbered (13) - (17).

Subchapter F. Vehicle Retirement and Mobile Emission Reduction Credits

Division 1. Mobile Emission Reduction Credit Program

§114.201 and §114.202

The adoption repeals the MERC program found in §114.201 and the MERC fund found in §114.202. Both of these sections were program elements of the TCF program, which was repealed by the commission on April 26, 2006, following enactment of SB 1032 in 2005, which repealed the TCF program. The legislative repeal made this program no longer necessary.

Subchapter G. Transportation Planning

§114.270

The adoption amends §114.270 by deleting §114.270(f), the TCM substitution process. The re-authorization of the SAFETEA-LU eliminated the requirement for an EPA-approved state process for approving TCM substitutions. The provisions of the SAFETEA-LU establish that if there is a conflict between an approved state process and the approval process contained in the SAFETEA-LU, the state must follow the requirements found in the SAFETEA-LU. This adoption also strikes language in subsection (a). Subsequent to the close of the public comment period, the commission determined that language in subsection (a), referring to the now-deleted TCM substitution process in subsection (f), should be stricken in order to provide consistency in the rule and avoid confusion.

Subchapter K. Mobile Source Incentive Programs

Division 2. Light-Duty Motor Vehicle Purchase or Lease Incentive Program

§114.618

The adopted rulemaking repeals the requirement of §114.618 that requires automobile manufacturers to publish a brochure annually and submit it to the commission by September 1st of every year. The adoption repeals this requirement at the directive of HB 1365, 78th Legislature (2003).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking removes various outdated requirements and aligns state rules with federal and state statutes as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES and SECTION BY SECTION DISCUSSION sections above. Because the adopted rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to remove outdated rules making state rules consistent with state and federal statutes, this adopted rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. Because these adopted rules remove requirements, they do not result in any new requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The commission solicited public comment regarding this draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply to these adopted amendments because this action discontinues requirements as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES and SECTION BY SECTION DISCUSSION sections of this preamble. Also, the adopted rules remove various outdated requirements and align state rules with federal and state statutes. Promulgation and enforcement of these amendments will be neither a statutory or constitutional taking of private real property. Specifically, the adopted amendments do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the adopted regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Texas Coastal Management Program (CMP), and , therefore, required that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies. The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

PUBLIC COMMENT

The proposal was published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1197). The commission held a public hearing on April 3, 2007, in Austin. The comment period closed on April 9, 2007. The commission received comments from only the Environmental Protection Agency (EPA).

RESPONSE TO COMMENTS

EPA supported the commission's proposed repeals in response to implementation of federal and state legislation. EPA commented that statutory language now in the Clean Air Act as a result of SAFETEA-LU rendered the commission's TCM rule obsolete and therefore, supported the repeal of 30 TAC §114.270(f). EPA commented that they did not oppose the repeal of the MERCs program or the requirement that automobile manufacturers publish annually a brochure listing vehicles' emissions standards since both actions were implementation of state legislation.

The commission did not make any changes to the rule in response to this comment. The rulemaking aligns certain transportation-air quality requirements with federal and state legislation and statutes. The commission appreciates EPA's support in this action.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides for general powers and duties under the TCAA. The amendment is adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.019 which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, and 382.019.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702749
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 19, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 239-2461

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30 TAC §114.4

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides for general powers and duties under the TCAA. The repeal is adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.019 which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The adopted repeal implements THSC, §§382.002, 382.011, 382.012, and 382.019.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702750

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 19, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 239-2461

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SUBCHAPTER F. VEHICLE RETIREMENT AND MOBILE EMISSION REDUCTION CREDITS

DIVISION 1. MOBILE EMISSION REDUCTION CREDITS

30 TAC §114.201, §114.202

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides for general powers and duties under the TCAA. The repeals are adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.019 which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The adopted repeals implement THSC, §§382.002, 382.011, 382.012, and 382.019.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702751
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 19, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 239-2461

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SUBCHAPTER G. TRANSPORTATION PLANNING

30 TAC §114.270

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.002 concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which provides for general powers and duties under the TCAA; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.208, which authorizes the commission to work with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. The amendment is also adopted under the statutory requirement for transportation conformity found in §176(c) of the 1990 Federal Clean Air Act Amendments. In addition, 40 Code of Federal Regulations (CFR) Part 51, Subpart T and Part 93, Subpart A established criteria and procedures for determining whether transportation plans, programs, and projects in nonattainment and maintenance areas conform with the state implementation plan.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.019.

§114.270. Transportation Control Measures.

(a) Purpose. The purpose of this section is to implement requirements relating to transportation control measures (TCMs). These requirements address the roles and responsibilities of the metropolitan planning organizations (MPOs) and implementing transportation agencies in nonattainment and maintenance areas.

(b) Applicability. This section applies to MPOs and agencies that implement TCMs in designated nonattainment or maintenance areas. The affected nonattainment and maintenance areas are listed in §101.1 of this title (relating to Definitions).

(c) General. All TCMs shall be developed, coordinated, funded, approved, implemented, tracked, evaluated, and monitored in accordance with §114.260 of this title (relating to Transportation Conformity); Title 40 Code of Federal Regulations, Part 93 (Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Laws, as amended); the Federal Clean Air Act, 42 United States Code, 1970, as amended; and the EPA TCM SIP approval criteria listed in the EPA guidance document "Transportation Control Measures: State Implementation Plan Guidance," EPA 450/2-89-020, September 1990.

(d) MPO responsibilities. The MPO shall:

(1) ensure that all responsibilities required by subsection (c) of this section are fulfilled;

(2) maintain, on a rolling basis, complete and accurate records of all TCMs for at least five years. TCM records shall be sufficient to accurately reflect the effectiveness of the TCM program and shall include the following:

(A) the annual status of the implementation of the TCM, including quantification of progress;

(B) an annual estimate of the funding and other resources expended toward implementing the TCM, and a comparison of the actual and projected expenditures;

(C) an annual estimate of the emission reductions achieved from implementation of the TCM, and a comparison of the actual and projected reductions; and

(D) any modifications to the TCM since the last annual report and/or projected modifications for the next reporting period to compensate for a shortfall in the implementation of the TCM or in the associated emissions reductions; and

(3) make such records available to representatives of the commission, the EPA, the Federal Highway Administration, the Federal Transit Administration, the Texas Department of Transportation, local air pollution agencies having jurisdiction in the area, and the public, upon request;

(e) Implementing agency responsibilities. The implementing agency shall have the responsibility to:

(1) ensure that all responsibilities required by subsection (c) of this section are fulfilled; and

(2) provide to the MPO upon request:

(A) a complete description of the TCMs and their associated estimated emission reduction benefits;

(B) evidence that the TCMs were properly adopted by a jurisdiction with legal authority to commit to and execute the program;

(C) evidence that funding has been, or will be, obligated to implement the TCMs; and

(D) a description of the monitoring program to assess the TCM effectiveness.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702753
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 19, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 239-2461

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SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS
DIVISION 2. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

30 TAC §114.618

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides for general powers and duties under the TCAA. The repeal is adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.019 which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The adopted repeal implements THSC, §§382.002, 382.011, 382.012, and 382.019.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702754
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 19, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 239-2461

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SUBCHAPTER G. TRANSPORTATION PLANNING

30 TAC §114.260

The Texas Commission on Environmental Quality (commission) adopts an amendment to §114.260 and corresponding revisions to the Transportation Conformity State Implementation Plan (SIP). Section 114.260 is adopted *with changes* to the proposed text as published in the February 9, 2007, issue of the *Texas Register* (32 TexReg 499).

The adopted revisions will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Federal Clean Air Act (FCAA) Amendments of 1990 as codified in 42 United States Code (USC), §§7401 *et seq*. required each state to submit a revision to its SIP by November 25, 1994, establishing enforceable criteria and procedures for making conformity determinations for metropolitan transportation plans, transportation improvement programs, and projects funded by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA). Final rules regarding conformity requirements were published by EPA on November 24, 1993. The Texas SIP revision that incorporated conformity requirements was adopted October 19, 1994, and approved by EPA November 8, 1995. EPA has amended the federal transportation conformity rule eight times: August 7, 1995; November 14, 1995; August 15, 1997; April 10, 2000; August 6, 2002; July 1, 2004; May 6, 2005; and March 10, 2006. The commission previously incorporated the federal changes up to, and including, the 2004 amendments. The commission is now updating its SIP and rule to incorporate the May 6, 2005, and March 10, 2006, federal amendments. In addition to the 2005 and 2006 federal amendments, changes to the transportation conformity federal rule were enacted with passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law August 10, 2005. Furthermore, EPA issued guidance in May 1999, that a state should include in its SIP when a regionally significant, non-federal project is considered *adopted or approved* by a non-federal entity. The addition of these changes to the

existing state rules would align the state rule with the current federal requirements and would address when a non-federal, regionally significant project is considered *adopted or approved* by a non-federal entity. Lastly, this adopted rulemaking makes administrative and grammatical changes and corrections to the existing rule language.

Transportation conformity is required under FCAA, §176(c) to ensure that federally supported highway and transit project activities are consistent with the purpose of the state's SIP. Conformity applies to areas designated nonattainment and those redesignated to attainment after 1990 with a maintenance plan developed under the FCAA. Conformity to the purpose of the SIP means that transportation activities would not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant National Ambient Air Quality Standards (NAAQS). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA amended the transportation conformity rule on May 6, 2005. The *Transportation Conformity Rule Amendments for the New $PM_{2.5}$ NAAQS: $PM_{2.5}$ Precursors* (70 FR 24280) specifies the transportation-related $PM_{2.5}$ precursors and when they apply in transportation conformity determinations in $PM_{2.5}$ (particulate matter) nonattainment and maintenance areas. The adoption would incorporate $PM_{2.5}$ precursors in the state rule and make a technical correction to a United States Department of Transportation (U.S. DOT) planning regulation cross-reference. EPA's 2005 revisions were codified in 40 Code of Federal Regulations (CFR) Part 93. Sections revised were §§93.102, 93.105, and 93.119.

EPA also amended the transportation conformity rule on March 10, 2006: the *$PM_{2.5}$ and PM_{10} Hot-Spot Analysis in Project Level Transportation Conformity Determinations for the New $PM_{2.5}$ and Existing PM_{10} National Ambient Air Quality Standards Final Rule* (71 FR 12468). The adoption would delete the current quantitative PM_{10} and $PM_{2.5}$ hot-spot analysis requirement from the state's conformity consultation requirements. The federal amendments were codified in 40 CFR Part 93. Sections revised were §§93.101, 93.105, 93.109, 93.116, 93.123, 93.125, 93.126, and 93.127.

The transportation conformity provisions in the SAFETEA-LU streamlined the requirements for state conformity SIPs. Prior to enactment of SAFETEA-LU, states were required to address all of the federal conformity rule's provisions in their conformity SIPs. Most of the sections of the federal rule were required to be copied verbatim from the federal rule into a state's SIP, as previously required under 40 CFR §51.390(d). Now, under SAFETEA-LU, states are required to address and tailor only the following three sections of the conformity rule in their conformity SIPs: 1.) 40 CFR §93.105, which addresses consultation procedures; 2.) 40 CFR §93.122(a)(4)(ii), which requires that written commitments to control measures that are not included in a Metropolitan Planning Organization's transportation plans must be obtained prior to a conformity determination and that such commitments must be fulfilled; and 3.) 40 CFR §93.125(c), which requires that written commitments to mitigation measures must be obtained prior to a project-level conformity determination and that project sponsors must comply with such commitments.

In May 1999, EPA issued guidance titled *Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision* addressing which projects could move forward during a conformity lapse. EPA recommended that states decide through the interagency consultation process when a regionally significant, non-federal project is considered *adopted or approved* by a non-federal entity that routinely receives funds from the FHWA or FTA. The interagency consultation group for Texas, the Technical Work Group (TWG), has agreed on language that is included in this adopted rulemaking. The commission adopts administrative and grammatical changes and corrections to the existing rule language in order to be consistent with current agency style and format. The commission also adopts the renumbering of certain parts of §114.260 to make adjustments for the adopted deletions and additions throughout the rule.

SECTION BY SECTION DISCUSSION

§114.260. Transportation Conformity.

The adopted change to §114.260(a) modifies the phrase *in the requirements* and replaces it with *certain requirements*. The last sentence in this subsection, *It includes policy, criteria, and procedures to demonstrate and assure conformity of transportation planning activities with the state implementation plan (SIP)* is replaced with, *This section addresses the consultation process and the written commitment requirements for control measures and mitigation measures that are used to demonstrate and assure conformity of transportation planning activities to the state implementation plan (SIP)* to more clearly describe the transportation conformity streamlining provisions in SAFETEA-LU.

Additionally, §114.260(a) is adopted with changes to the proposed text. The statutory reference for the implementation of conformity in section §114.260(a) has been changed from §176(c) to §176(c)(4)(e) to more specifically reflect the location in the FCAA.

The adopted change to §114.260(b) adds the term *criteria* in the first sentence to change the phrase *transportation-related pollutants* to *transportation-related criteria pollutants*. This change clarifies that the applicable pollutants are criteria pollutants. The second sentence adds *transportation-related criteria* to form the phrase *transportation-related criteria pollutants*. The word *include* is replaced with *are* and the precursor pollutants are listed in a separate sentence, which is then amended by adding $PM_{2.5}$ as a precursor and referring to 40 CFR §93.102. The addition of $PM_{2.5}$ to the sentence reflects the substantive change in EPA's May 6, 2005, final rule, the *Transportation Conformity Rule Amendments for the New $PM_{2.5}$ National Ambient Air Quality Standard: $PM_{2.5}$ Precursors* (70 FR 24280). The purpose of referring to 40 CFR §93.102 is to indicate the applicable precursors to be analyzed depending on the characteristics of the nonattainment area. Finally, the last sentence is deleted because its reference to nonattainment area boundaries is not needed in the rule language.

The adopted change to §114.260(c) deletes the reference to 40 CFR Part 93, Subpart A, (62 FR 43780), and adds the replacement reference 40 CFR §93.122(a)(4)(ii) and 40 CFR §93.125(c). The SAFETEA-LU amendments at 42 USC, §7506(c)(4)(E) directs that only these two sections plus CFR §93.105 need to be in the state conformity rule. The addition of these three sections streamlines the requirements for state conformity SIPs.

The adopted change revises §114.260(d)(2)(A)(i) by deleting the rule language *Air Quality Planning and Implementation Division* and replacing it with *executive director*. The adoption revises §114.260(d)(2)(A)(ii) by deleting the word *involvement* and replacing it with *participation* and changes the 23 CFR

reference *§450.316(b)(1)* to *Part 450*. The adoption revises §114.260(d)(2)(A)(iii) by deleting *by the Metropolitan Planning Rule* and changing the 23 CFR reference *§450.316(b)(1)* to *Part 450*. The adoption revises §114.260(d)(2)(A)(v) by deleting the word *involvement* and replacing it with *participation*, and deleting §114.260(d)(2)(A)(vii). The adoption revises §114.260(d)(2)(B)(v) by correcting the reference to 40 CFR §93.109(g)(2)(iii) with a reference to 40 CFR §93.109(l)(2)(iii). The adoption revises §114.260(d)(3)(A) by deleting the word *involvement* and replacing it with *participation*. The adoption revises §114.260(d)(3)(C) by deleting the words *identified as the Technical Working Group for Mobile Emissions* and deleting the last sentence, *The function of this working group may be delegated to an existing group with similar composition and purpose*. The adoption revises §114.260(d)(5) by deleting the word *involvement* and replacing it with *participation* and renumbering the CFR reference for the fee schedule for public inspection and copying. These adopted revisions align the state rule with the federal rule; allow the executive director to delegate authority to staff without explicitly naming the designee; provide flexibility to the Technical Work Group; and bring existing rule language into agreement with Texas Register requirements, agency format guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual, August 2006.*

The adopted change to §114.260(e) addresses when a regionally significant, non-federal project is considered *adopted* or *approved* by a non-federal agency. This section was added to clarify the approval and adoption process of a non-federal, regionally significant project. In the event of a transportation conformity lapse, the provision may allow certain project phases to continue.

The adopted change to §114.260(f) deletes the words *begins on* and replaces them with *for transportation conformity determinations that begin the interagency consultation process after.* The purpose of this change is to make clear that compliance with this rule revision applies at the beginning of the interagency consultation process.

The adopted revision makes administrative and grammatical changes and corrections to the existing rule language in order to be consistent with current agency style and format guidelines. The adoption also renumbers certain parts of §114.260 to make adjustments for the adopted deletions and additions throughout the rule.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking considering the regulatory impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the adopted rulemaking meets the definition of a *major environmental rule* as defined in that statute. A *major environmental rule* means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking meets the definition of a *major environmental rule* because the transportation conformity requirements are specifically intended to protect the environment and/or reduce risks to human health, and may have material affects on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Federal transportation conformity requirements subject all nonattainment and maintenance areas to demonstrate conformity with specific emissions budgets, or be subject to loss of highway or other transportation funding. The adopted change to §114.260 will incorporate recent federal transportation conformity revisions into the state's SIP, including those from the surface transportation reauthorization act of 2005, SAFETEA-LU. Transportation conformity is an FCAA requirement ensuring that federally supported highway and transit projects conform to each state's SIP. Additionally, the adopted change to §114.260 will reflect existing language in the federal transportation conformity rule and other federal transportation conformity-related rules and guidance.

The adopted rulemaking does not, however, meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rulemaking implements requirements of the FCAA and SAFETEA-LU. Under 42 USC, §7506, each SIP must contain criteria and procedures for consultation, and enforcement and enforceability in accordance with the EPA's criteria and procedures for consultation, enforcement, and enforceability.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded *based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application*. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted adopted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the goals of the FCAA; thus, states must develop programs and strategies to help ensure that those goals are met. However, in this instance, the FCAA is clear in requiring that states comply with EPA's criteria and procedures for consultation, enforcement, and enforceability. EPA's transportation conformity rule and SAFETEA-LU provide specific requirements and limited flexibility that must be met by states. Because of the ongoing need to address the requirements of 42 USC, §§7401, *et seq*., the commission routinely proposes and adopts SIP rules. As discussed elsewhere in this preamble, states are required to incorporate requirements for transportation conformity in compliance with EPA's transportation conformity rule and SAFETEA-LU. The legislature is presumed to understand this

federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the adopted rule may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that *when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation*. *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of *substantial compliance*. The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the adopted rulemaking is to incorporate recent federal transportation conformity revisions into the state's SIP, including those from SAFETEA-LU, in addition to reflecting already existing changes in the federal transportation conformity rule and other federal transportation conformity-related rules and guidance. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the adopted rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act (TCAA)), and the Texas Water Code (TWC), which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.012, 382.017, and 382.208. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because although the adopted rulemaking meets the definition of a *major environmental rule*, it does not meet any of the four applicability requirements.

The commission solicited comments on the Regulatory Impact Analysis Determination during the public comment period, but did not receive any comments during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the adopted rulemaking is to incorporate recent federal transportation conformity revisions into the state's SIP, including those from SAFETEA-LU, in addition to reflecting already existing changes in the federal transportation conformity rule and other federal transportation conformity-related rules and guidance, as discussed elsewhere in this preamble. Under FCAA, 42 USC, §7506, each SIP must contain criteria and procedures for consultation, and enforcement and enforceability in accordance with the EPA's criteria and procedures for consultation, enforcement and enforceability.

The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, as explained elsewhere in this preamble, which is exempt under Texas Government Code, §2007.003(b)(4). For this reason, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), concerning Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). This rulemaking action complies with 40 CFR Part 51, concerning Requirements for Preparation, Adoption, and Submittal of Implementation Plans, and Title 40 generally. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicited comment on the consistency of the adopted rulemaking with the CMP during the public comment period, but received no comments on this issue.

PUBLIC COMMENT

The public hearing for this rulemaking was held on March 5, 2007, 10:00 a.m., Texas Commission on Environmental Quality, Building B, Room 201A, 12100 Park 35 Circle, Austin.

The EPA submitted written comment in general support of the rule with suggested changes to the proposal.

RESPONSE TO COMMENTS

Statutory Reference

The EPA commented that the appropriate statutory reference for the implementation of conformity in §114.260(a) is §176(c)(4)(e) of the FCAA. The EPA also commented that the new language to "help demonstrate conformity" is not appropriate and recommended removing the word "help."

The commission appreciates the comment and has included the more specific reference to §176(c)(4)(e), instead of the more broad reference to §176(c) of the FCAA. The commission also agrees that the word "help" is not necessary and has removed it.

Applicability Section

The EPA commented that §114.260(b) is not necessary and should be deleted.

The commission agrees that the section is not necessary, but has decided to leave the section in the rule as additional information to help the public understand the conformity process.

CFR Incorporation

The EPA commented that the approach taken in §114.260(c) to incorporate the federal provisions found at 40 CFR §93.102(a)(4)(ii) and §93.125(c) is adequate, but commented that added clarity can be provided by customizing these provisions.

The commission agrees and will work with interagency consultation partners to develop customized language to include during a future SIP and rule revision.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.105, concerning General Policy; and under THSC, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides for general powers and duties under the TCAA; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.208, which authorizes the commission to work with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS. The rule is also adopted under the statutory requirement for transportation conformity found in §176(c) of the 1990 FCAA Amendments, 40 CFR Part 51, Subpart T and Part 93, Subpart A established criteria and procedures for determining whether transportation plans, programs, and projects in nonattainment and maintenance areas conform with the SIP.

The adopted revisions implement Texas Water Code, §5.103 and §5.103, and Texas Health and Safety Code, §§382.011, 382.012, and 382.208.

§114.260. Transportation Conformity.

(a) Purpose. The purpose of this section is to implement certain requirements set forth in 40 Code of Federal Regulations (CFR) Part 93, Subpart A (relating to Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 United States Code (USC) or the Federal Transit Laws), which are the regulations developed by the United States Environmental Protection Agency (EPA) under the Federal Clean Air Act Amendments of 1990, §176(c)(4)(e). This section addresses the consultation process and the written commitment requirements for control measures and mitigation measures that are used to demonstrate and assure conformity of transportation planning activities with the state implementation plan (SIP).

(b) Applicability. This section applies to transportation-related criteria pollutants for which an area is designated nonattainment or is subject to a maintenance plan. The transportation-related criteria pollutants are ozone, carbon monoxide, nitrogen dioxide, particles with an aerodynamic diameter of ten micrometers (PM_{10}) and smaller, and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). This section also applies to the precursors of ozone, nitrogen dioxide, PM_{10}, and $PM_{2.5}$ as required in 40 CFR §93.102.

(c) CFR incorporation. The written commitment requirements as specified in 40 CFR §93.122(a)(4)(ii) and §93.125(c) are adopted by reference.

(d) Consultation. Under 40 CFR §93.105, regarding consultation, the following procedures must be undertaken in nonattainment and maintenance areas before making conformity determinations and before adopting applicable SIP revisions.

(1) General factors.

(A) For the purposes of this subsection, concerning consultation, the affected agencies include:

(i) EPA;

(ii) Federal Highway Administration (FHWA);

(iii) Federal Transit Administration (FTA);

(iv) Texas Department of Transportation (TxDOT);

(v) metropolitan planning organizations (MPOs) in nonattainment or maintenance areas;

(vi) local publicly owned transit services in nonattainment or maintenance areas (the designated recipient of FTA §5307 funds);

(vii) Texas Commission on Environmental Quality (commission);

(viii) local air quality agencies in nonattainment or maintenance areas (recipients of 42 USC, §7405 funds).

(B) All correspondence with the affected agencies in subparagraph (A) of this paragraph must be addressed to the following designated points of contact:

(i) MPO: executive director or designee;

(ii) commission: executive director or designee;

(iii) TxDOT: director of Transportation Planning and Programming or designee;

(iv) TxDOT: director of Environmental Affairs Division or designee;

(v) FHWA: administrator of Texas Division or designee;

(vi) FTA: director of Office of Program Development or designee - FTA Region 6;

(vii) EPA: regional administrator or designee - EPA Region 6;

(viii) TxDOT District: district engineer or designee;

(ix) local publicly owned transit services (the designated recipient of FTA §5307 funds): general manager or designee;

(x) local air quality agencies (recipients of 42 USC, §7405 funds): director or designee; and

(xi) commission regions in nonattainment or maintenance areas: regional director or designee.

(2) Roles and responsibilities of affected agencies.

(A) The MPO, in cooperation with TxDOT and publicly owned transit services, shall consult with the agencies in paragraph (1)(A) of this subsection in the development of Metropolitan Transportation Plans (MTPs), Transportation Improvement Programs (TIPs), projects, technical analyses, travel demand or other modeling, and data collection. Specifically, the MPOs shall:

(i) allow the commission's executive director or a designated representative, to be a voting member of technical committees on surface transportation and air quality in each nonattainment and maintenance area in order to consult directly with the particular committee during the development of the transportation plans, programs, and projects;

(ii) send information on time and location, an agenda, and supporting materials (including preliminary versions of MTPs and TIPs) for all regularly scheduled meetings on surface transportation or air quality to each of the contacts specified in paragraph (1)(B) of this subsection. This information must be provided in accordance with the locally adopted public participation process as required in 23 CFR Part 450;

(iii) after preparation of final draft versions of MTPs and TIPs, and before adoption and approval by the affected governing body, ensure that the contacts specified in paragraph (1)(B) of this subsection receive a copy, and that they are included in the local area's public participation process as required in 23 CFR Part 450. Upon approval of MTPs and TIPs, MPOs shall distribute final approved copies of the documents to the contacts specified in paragraph (1)(B) of this subsection;

(iv) for the purposes of regional emissions analysis, initiate a consultation process with the affected agencies specified in paragraph (1)(A) of this subsection during the development stage of new or revised MTPs and TIPs to determine which transportation projects should be considered regionally significant and which projects should be considered to have a significant change in design concept and scope from the effective MTP and TIP. Regionally significant projects will include, at a minimum, all facilities classified as principal arterial or higher, or fixed guideway systems or extensions that offer an alternative to regional highway travel. Also, these include minor arterials included in the travel demand modeling process that serve significant interregional and intraregional travel, and connect rural population centers not already served by a principal arterial, or connect with intermodal transportation terminals not already served by a principal arterial. A significant change in design concept and scope is defined as a revision of a project in the MTP or TIP that would significantly affect model speeds, vehicle miles traveled, or network connections. In addition to new facilities, examples include changes in the number of through lanes or length of project (more than one mile), access control, addition of major intermodal terminal facilities (such as new international bridges, park-and-ride lots, and transfer terminals), addition/deletion of interchanges, or changing between free and toll facilities. When a significant change in the design and scope of a project is proposed, the MPO shall document the rationale for the change and give the affected agencies specified in paragraph (1)(A) of this subsection a 30-day opportunity to comment on the rationale. The MPO shall consider the views of each agency that comments, and respond in writing before any final action on these issues. If the MPO receives no comments within 30 days, the MPO may assume concurrence by the agencies specified in paragraph (1)(A) of this subsection;

(v) include in the TIP a list of projects exempted from the requirements of a conformity determination under 40 CFR §93.126 and §93.127. The MPO shall consult with the affected agencies specified in paragraph (1)(A) of this subsection in determining if a project on the list has potentially adverse emissions for any reason, including whether or not the exempt project will interfere with implementation of an adopted transportation control measure (TCM). The MPO shall respond in writing to all comments within 30 days on final MTP and TIP documents. In addition, if no comments are received as part of the subsequent public participation process for the TIP, the MPO may proceed with implementation of the exempt project;

(vi) notify the affected agencies specified in paragraph (1)(A) of this subsection in writing of any MTP or TIP revisions or amendments that add or delete the exempt projects identified in 40 CFR §93.126;

(vii) before adoption of any new or substantially different methods or assumptions used in the hot spot or regional emissions analysis, provide an opportunity for the agencies specified in paragraph (1)(A) of this subsection to review and comment;

(viii) in coordination with TxDOT and the local transit agencies, disclose all known, regionally significant, non-federal projects, even if the sponsor has not made a final decision on its implementation; include all disclosed, or otherwise known, regionally significant, non-federal projects in the regional emissions analysis for the nonattainment area; respond in writing to any comments that known plans for a regionally significant, non-federal project have not been properly reflected in the regional emissions analysis; and have recipients of federal funds determine annually that their regionally significant, non-federal projects are included in a conforming MTP or TIP, or are included in a regional emissions analysis of the MTP and TIP. The MPO shall consult with project sponsors to determine the non-federal projects' location and design concept and scope to be used in the regional emissions analysis, particularly for projects that the sponsor does not report a single intent because the sponsor's alternatives selection process is not yet complete. If the MPO assumes a design concept and scope that is different from the sponsor's ultimate choice, the next regional emissions analysis for a conformity determination must reflect the most recent information regarding the project's design concept and scope;

(ix) ensure timely TCM implementation and report on the implementation and emissions reductions status of adopted TCMs annually to the commission;

(x) cooperatively share the responsibility for conducting conformity determinations on transportation activities that cross the borders of MPOs or nonattainment and maintenance areas. The affected MPOs will enter into a Memorandum of Agreement (MOA) that will define the effective boundary and the respective responsibilities of each MPO for regional emissions analysis. The MPOs will be responsible within their respective metropolitan area boundaries and, at their option, beyond to the boundaries of the nonattainment/maintenance areas, for regional emissions analysis. Adjacent MPOs or nonattainment/maintenance areas or basins will share information concerning air quality modeling assumptions and emission rates that affect both areas; and

(xi) for the purpose of determining the conformity of all projects outside the metropolitan planning area, but within the

nonattainment or maintenance area, enter into an MOA involving the MPO and TxDOT for cooperative planning and analysis of projects.

(B) The commission, as the lead air quality planning agency, shall work in consultation with the agencies specified in paragraph (1)(A) of this subsection in developing applicable transportation-related SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. Specifically, the commission shall:

(i) set agendas and schedule meetings to seek advice and comments from all agencies specified in paragraph (1)(A) of this subsection during preparation of applicable transportation-related SIP revisions;

(ii) schedule public hearings in order to gather public input on the applicable transportation-related SIP revisions in accordance with 40 CFR §51.102 and notify the agencies specified in paragraph (1)(B) of this subsection of the hearings;

(iii) provide copies of final documents, including applicable adopted or approved transportation-related SIP revisions and supporting information, to all agencies specified in paragraph (1)(B) of this subsection;

(iv) after consultation with the MPO regarding TCMs, distribute to all agencies specified in paragraph (1)(B) of this subsection and other interested persons the list of TCMs proposed for inclusion in the SIP. In consultation with the agencies specified in paragraph (1)(A) of this subsection, the commission shall determine whether past obstacles to implementation of TCMs have been identified and are being overcome, and determine whether the MPOs and the implementing agencies are giving maximum priority to approval or funding for TCMs. Also, the commission shall consider, in consultation with the affected agencies, whether delays in TCM implementation necessitate a SIP revision to remove TCMs or to substitute TCMs or other emission reduction measures; and

(v) consult with the applicable agencies specified in paragraph (1)(A) of this subsection, in order to cooperatively choose conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR §93.109(l)(2)(iii).

(C) Any group, entity, or individual planning to construct a regionally significant transportation project that is not an FHWA-FTA project (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered) shall disclose project plans to the MPO on a regular basis and disclose any changes to those plans immediately. This requirement also applies to recipients of funds designated under 23 USC or the federal transit laws.

(3) General procedures.

(A) The MPO, TxDOT, or the commission, as applicable, shall respond to comments of affected agencies on MTPs, TIPs, projects, or SIP revisions in accordance with the public participation procedures that govern the involved action. The MPO, TxDOT, or the commission, as applicable, shall include all comments and the replies to those comments with final documents when they are submitted for adoption by the agency's governing board. In the event that comments are not adequately resolved, the procedures outlined in paragraph (4) of this subsection regarding conflict resolution apply.

(B) Because the validity of the regional emissions analysis depends on transportation modeling assumptions that need periodic updates, the MPO, with the assistance of TxDOT and local publicly owned transit agencies, will conduct meetings with the agencies specified in paragraph (1)(A) of this subsection to cooperatively establish research and data collection efforts and regional model development (e.g., household/transportation surveys).

(C) For the purposes of evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot spot and regional emissions analyses, agencies specified in paragraph (1)(A) of this subsection shall participate in a working group. The frequency of meetings and agendas for them will be cooperatively determined by the agencies specified in paragraph (1)(A) of this subsection.

(D) The commission, affected MPOs, affected local air quality agencies, and TxDOT shall cooperatively evaluate events that will trigger the need for new conformity determinations. New conformity determinations may be triggered by events established in 40 CFR §93.104 as well as other events, including emergency relief projects that require substantial functional, locational, and capacity changes, or in the event of any other unforeseeable circumstances.

(E) The MPO and its governing body, or TxDOT if applicable, shall make conformity determinations for all MTPs, TIPs, regionally significant projects, and all other events as required by 40 CFR Part 93, Subpart A and this section. Upon completion of the transportation conformity determination review process (including consultation, public participation, and all other requirements of this section), FHWA and FTA will issue a joint conformity finding, indicating the transportation conformity status of the document(s) under review. The effective date of the conformity determination for an area is the date of the joint conformity finding made by FHWA-FTA.

(4) Conflict resolution.

(A) The commission and the MPO (or TxDOT where appropriate) shall make a good-faith effort to address the major concerns of the other party in the event they are unable to reach agreement on the conformity determination of a proposed MTP or TIP. The efforts must include meetings of the agency executive directors, if necessary.

(B) In the event that the MPO or TxDOT determines that every effort has been made to address the commission's concerns, and that no further progress is possible, the MPO or TxDOT shall notify the commission's executive director in writing to this effect. This subparagraph must be cited by the MPO or TxDOT in any notification of a conflict that may require action by the governor, or his or her delegate under subparagraph (C) of this paragraph.

(C) The commission has 14 calendar days from date of receipt of notification, as required in subparagraph (B) of this paragraph, to appeal to the governor. If the commission appeals to the governor, the final conformity determination must then have the concurrence of the governor. The governor may delegate his or her role in this process, but not to the commission or commission staff, a local air quality agency, the Texas Transportation Commission or TxDOT staff, or an MPO. This subparagraph must be cited by the commission in any notification of a conflict that may require action by the governor or his or her delegate. If the commission does not appeal to the governor within 14 calendar days from receipt of written notification, the MPO or TxDOT may proceed with the final conformity determination.

(5) Public comment on conformity determinations. Consistent with the requirements of 23 CFR Part 450, concerning public participation, the agencies making conformity determinations on transportation plans, programs, and projects must establish a proactive public participation process that provides opportunity for public review and comment. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR §7.43. In addition, these agencies shall address in writing any public comment claiming that a non-FHWA/FTA funded, regionally significant project

has not been properly represented in the conformity determination for an MTP or TIP. Finally, these agencies shall provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

(6) Good-faith effort made by the consulting agencies. In formulating an enforcement policy regarding a violation of this subsection (relating to the consultation process) the commission may consider any good-faith effort made by the consulting agencies to comply.

(e) Regionally significant, non-federal projects. For the purposes of 40 CFR §93.121, adoption or approval of a regionally significant, non-federal project (a regionally significant project that does not require FHWA or FTA approval or funding) occurs when affected agencies that are recipients of federal funds designated under 23 USC or the federal transit laws take one of the following actions:

(1) board approval, action, or resolution (such approval, action, or resolution does not include MPO approval for the purposes of approving a project in a currently conforming MTP or TIP);

(2) issuance of administrative permits for the regionally significant project;

(3) action of official authorizing the regionally significant project to proceed;

(4) providing grants or loans for the construction of a regionally significant project; or

(5) contract execution for the regionally significant project.

(f) Compliance date. Compliance with this section is required for transportation conformity determinations that begin the interagency consultation process after the date of EPA approval of the transportation conformity SIP associated with this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702756
Robert Martinez
Director, Environmental Law Division
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Effective date: July 19, 2007
Proposal publication date: February 9, 2007
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CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 4. CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II) AT MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §115.247

The Texas Commission on Environmental Quality (commission) adopts the amendment to §115.247. Section 115.247 is adopted *with changes* to the proposed text as published in the January 26, 2007, issue of the *Texas Register* (32 TexReg 282).

The adopted amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

For facilities where 95% or more of the motor vehicle fleet being fueled onsite is equipped with onboard refueling vapor recovery (ORVR) equipment, Stage II vapor recovery equipment is an unnecessary expense because refueling emissions are captured via the vehicle's ORVR equipment instead of the Stage II dispenser. The EPA estimates it costs about $40,000 to install a Stage II vacuum-assist system and $4,100 per year to maintain it. ORVR systems capture vapors otherwise vented to the atmosphere. ORVR systems are passive systems that force gasoline vapors displaced from a vehicle's fuel tank during refueling to be directed to a carbon-canister holding system and ultimately to the engine where they are consumed. EPA phased in ORVR systems for automobiles starting with model year 1998. All automobiles manufactured after 2000 must be equipped with ORVR. Phase-in of ORVR for light-duty trucks began in model year 2001, and by model year 2003, all new light-duty trucks were required to have ORVR systems.

SECTION DISCUSSION

The adopted amendment to §115.247, Exemptions, would add paragraph (3) *any motor vehicle dispensing facility where 95% or more of the motor vehicle fleet being fueled onsite is equipped with onboard refueling vapor recovery equipment. To maintain a facility's exempt status under this paragraph, the owner or operator must submit documentation showing the fleet meets the requirements under this paragraph on an annual basis no later than January 31 of each year to the executive director or designated representative.*

ANTI-BACKSLIDING DEMONSTRATION

The Stage II program is a Federal Clean Air Act (FCAA) specified volatile organic compound (VOC) control strategy for certain ozone nonattainment areas. Stage II vapor recovery equipment must be certified by EPA to achieve a minimum 95% control efficiency for VOC emissions, as detailed in their Stage II Vapor Recovery Systems-Options Paper dated February 7, 2006. ORVR systems capture VOC emissions inside the vehicle thus making Stage II vapor recovery equipment unnecessary. Therefore, exempting facilities that refuel only ORVR-equipped vehicles from the Stage II program will not result in increased VOC emissions because the fugitive emissions will be captured via the vehicle's ORVR system.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. A "major environmental rule" is a rule which is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the

state or a sector of the state. The intent of this rulemaking action is to provide an exemption from Stage II vapor recovery requirements for facilities where 95% or more of the motor vehicle fleet being fueled onsite is equipped with ORVR equipment because use of both provides no net environmental benefit. The commission solicited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination. Also, the amendment is adopted to continue to meet the requirements of 42 United States Code, §7511a(b)(3) and Texas Health and Safety Code (THSC), §382.019 and §382.208, but in a less financially burdensome manner on owners and operators of gasoline dispensing facilities.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply to the adopted amendment because this action discontinues Stage II vapor recovery requirements for specific regulated activities. Promulgation and enforcement of the proposed amendment would be neither a statutory or constitutional taking of private real property. Specifically, the proposed amendment does not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and the adopted revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CPM goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

PUBLIC COMMENT

The proposal was published in the January 26, 2007, issue of the *Texas Register* (32 TexReg 282). The commission held a public hearing on February 27, 2007, and on February 28, 2007. The comment period closed on March 15, 2007. The commission received comments from the Environmental Protection Agency (EPA), Harris County Public Health & Environmental Services, Kelly Hart & Hallman LLP, on behalf of General Motors, and Sierra Club.

RESPONSE TO COMMENTS

The Sierra Club commented that there are no record-keeping requirements to document that only ORVR equipped vehicles are fueled at a pump with no Stage II equipment and that there are no procedures that would ensure that a non-ORVR equipped vehicle would be fueled at a pump with no Stage II equipment. The Sierra Club also asks where the description of TCEQ compliance and enforcement programs required to implement this proposed exemption are.

RESPONSE

The commission appreciates the comment. This exemption is targeted toward those facilities with fleets. When the facilities are inspected by TCEQ Compliance and Enforcement staff, they will be required to provide documentation showing what vehicles are in their fleet. At that time, TCEQ staff will review the documentation to ensure that all vehicles in the fleet are ORVR equipped. Facilities will also have to apply for an exemption every year.

The Sierra Club asks how the TCEQ will verify that the ORVR systems are working so that volatile organic compound emissions are not escaping into the air when fueled at pumps with no Stage II equipment.

RESPONSE

The vehicle's On Board Diagnostic system identifies any malfunctions via the Malfunction Indicator Light with the vapor recovery system and alerts the vehicle operator that repairs are necessary. In Inspection and Maintenance (I/M) program areas the On Board Diagnostic system is tested annually during the vehicle's On Board Diagnostic test. Vehicles with an identified problem are not allowed to receive the annual safety and emissions certificate unless and until the problem is corrected.

Harris County Public Health & Environmental Services (HCPHES) was generally in support of the rule. HCPHES expressed a concern regarding the ability of a facility to demonstrate and the record keeping necessary for inspectors to verify that the dispensing facility is indeed used exclusively for the fueling and/or refueling of vehicles equipped with ORVR.

RESPONSE

The commission appreciates the comment. This exemption is targeted toward those facilities with fleets. When the facilities are inspected by TCEQ Compliance and Enforcement staff, they will be required to provide documentation showing what vehicles are in their fleet. At that time, TCEQ staff will review the documen-

tation to ensure that all vehicles in the fleet are ORVR equipped. Facilities will also be required to submit a Stage II Vapor Recovery Exemption Confirmation Form to the TCEQ on a yearly basis.

The EPA commented that in general, they were in support of this rulemaking. EPA did request clarification on the types of fleets affected in this rule and revision of the language to be clear that only fueling of new vehicles at automobile assembly plants and refueling of rental cars at rental car facilities are exempt. The EPA commented that the TCEQ may consider changing the rule language to "where 95% or more of the motor vehicle fleet being fueled onsite is equipped with ORVR" rather than "where more than 95% of the motor vehicle fleet being fueled onsite is equipped with ORVR."

RESPONSE

The commission appreciates the comment and has clarified the types of fleets this rule will affect. The commission also agrees that the language should be changed and has done so.

The EPA commented that in order for them to approve an exemption from Stage II into the Texas SIP for the fueling of new vehicles at an automobile assembly plant or rental car facility, the State must include its technical evaluation that the widespread use benchmark has been achieved for these types of facilities. TCEQ must also provide assurance that any facility wishing to remove Stage II equipment maintains its eligibility for its motor vehicle fleet to operate under the exemption.

RESPONSE

The commission contends that EPA's December 12, 2006, Memorandum entitled "Removal of Stage II Vapor Recovery in situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated" provides the technical evaluation that the widespread use benchmark has been achieved for automobile assembly plants. The memo states that "EPA believes that if 95 percent of the vehicles in a fleet have ORVR, then widespread use will likely have been demonstrated." The TCEQ will provide the assurance that that any automobile assembly plant wishing to remove Stage II equipment maintains its eligibility for its motor vehicle fleet to operate under the exemption by continuing to inspect the facilities. When the facilities are inspected by TCEQ Compliance and Enforcement staff, they will be required to provide documentation showing what vehicles are in their fleet. At that time TCEQ staff will review the documentation to ensure that all vehicles in the fleet are ORVR equipped. Facilities will also be required to submit a Stage II Vapor Recovery Exemption Confirmation Form to the TCEQ on a yearly basis.

The EPA commented that in order for them to approve any of these exemptions from Stage II into the Texas SIP, the State must include in its rulemaking process how the exemption meets the requirements of Section 110(l) of the FCAA.

RESPONSE

The commission appreciates the comment and has addressed this in the anti-backsliding demonstration.

The EPA commented that in order for them to approve an exemption from Stage II into the Texas SIP for the fueling of flexible fuel vehicles at E85 facilities, the State must include in its rulemaking process its technical evaluation that any increase in emissions caused by operating E85 fueling facilities without Stage II controls is so small as to clearly not interfere with attainment of the ozone standard or reasonable further progress or any other applicable CAA requirement.

RESPONSE

The commission appreciates the comment concerning the fueling of flexible fuel vehicles at E85 facilities, however this is beyond the scope of this rulemaking. This rulemaking will remove requirements for fleet refueling facilities only. This will not affect requirements for facilities open to the public. In order to be exempt under this rule, the facility will have to provide documentation proving 95% or more of the vehicles in the fleet are equipped with ORVR. No increase in emissions are expected, and therefore this rulemaking will not interfere with attainment of the ozone standard or reasonable progress toward meeting that standard.

Kelly Hart & Hallman LLP Attorneys at Law commented on behalf of General Motors Corporation in support of this rulemaking.

RESPONSE

The commission appreciates the comment in support of the rulemaking.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, and 382.208.

§115.247. Exemptions.

The following are exempt from the requirements of this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities):

(1) gasoline dispensing equipment used exclusively for the fueling of aircraft, watercraft, or implements of agriculture;

(2) any motor vehicle fuel dispensing facility for which construction began prior to November 15, 1992, and which has a monthly throughput of less than 10,000 gallons of gasoline. For the purposes of this paragraph, the monthly throughput shall be based on the maximum monthly gasoline throughput for any calendar month after January 1, 1991. To maintain a facility's exempt status under this paragraph, the owner or operator must submit the facility's monthly gasoline throughput on an annual basis no later than January 31 of each year to the executive director or designated representative; and

(3) any motor vehicle dispensing facility where 95% or more of the motor vehicle fleet being fueled onsite is equipped with onboard refueling vapor recovery equipment. To maintain a facility's exempt status under this paragraph, the owner or operator must submit documentation showing the fleet meets the requirements under this

paragraph on an annual basis no later than January 31 of each year to the executive director or designated representative.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702757
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Director, Environmental Law Division
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Effective date: July 19, 2007
Proposal publication date: January 26, 2007
For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.14

The Texas Parks and Wildlife Commission adopts an amendment to §53.14, concerning Deer Management and Removal Permits, without changes to the proposed text as published in the April 20, 2007, issue of the *Texas Register* (32 TexReg 2249).

The amendment increases the fees for Deer Management Permit (DMP) renewals and Permits to Trap, Transport, and Transplant Game Animals and Game Birds (popularly referred to as "Triple T" permits).

The portion of the amendment affecting the Triple T permit (which includes the urban white-tailed deer removal permit) increases the fee for a Triple T application from $180 to $750. Elsewhere in this issue, the department is adopting an amendment to the Triple T rules in Chapter 65 that would require the payment of the prescribed Triple-T fee on a per-release site basis. In Fiscal Year 2006, the department issued 75 Triple T permits authorizing trapping activities at 63 sites and release activities at 163 sites. The department incurred costs of approximately $120,830 to process applications, perform site inspections, observe and enforce compliance, and prosecute violations of Triple T regulations; however, revenue from permit fees during the same time period was $13,500.

It is the policy of the Texas Parks and Wildlife Commission that the department recover the cost of administering permit programs that authorize the possession of live game animals. Additionally, under Parks and Wildlife Code, §43.061, the state may not incur any expense for the trapping, transporting, and transplanting of game animals and game birds under a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter E, which is the authorizing statute for the Triple T permit. The rule as adopted is necessary for the department to recoup the expenses of administering the Triple T permit program. The fee of $750 was derived by dividing the cost of program administration and enforcement by the number of release sites.

The portion of the amendment affecting the DMP would provide a consistent application process for new applications and renewals. The department has determined that it does not recover the cost of administering the DMP program under current fee amounts. Under current rule, the fee for the initial issuance of a DMP is $1,000 and the permit may be renewed annually. The current fee for a renewal is $600. Under Parks and Wildlife Code, §43.603, the commission may establish a fee for new or renewed DMPs, but the fee for a DMP may not exceed $1,000.

The department has determined that it does not recover the cost of administering the DMP program. In Fiscal Year 2006, the department issued 38 new DMPs and renewed 40 DMPs, incurring expenses of approximately $92,000 to process applications, perform site and facility inspections, observe and enforce compliance, and prosecute violations of DMP regulations; however, revenue from permit fees was $62,000. Data from FY 07 is incomplete, but 58 new DMPs have been issued and 46 have been renewed, an increase of 67%. It is logical to assume that administrative and enforcement costs have also increased and continue to be greater than revenue. In fact, FY 07 revenue of $85,000 is still below the expenses from the previous year, when there were 67% fewer permits.

Therefore, the department has determined that an increase in the renewal fee is necessary in order to recoup administrative and enforcement expenses to the greatest extent possible.

The rule will function by establishing the fee amounts for Triple T and DMP permits issued by the department.

The department received 19 comments opposing adoption of the fee increase for Triple T permits. Ten commenters expressed a specific rationale for opposing adoption. Those comments, accompanied by the department's responses, follow.

Eight commenters stated that the fee increase is unjustified and unfair. The department disagrees with the comments and responds that the fee increase is justified because the department must follow commission policy in attempting, to the greatest extent possible, to recoup the cost of the program from the users of the program, since it involves permits to possess live game animals. No changes were made as a result of the comments.

Ten commenters opposed adoption and stated that the department should delay for further cost/benefit analysis. The department disagrees with the comments and responds that further analysis is unnecessary. The department calculated the cost of administering and enforcing the Triple T program and distributed those costs on a per-permit basis. No changes were made as a result of the comment.

Six commenters opposed adoption and stated that permit users should have input before the rules are adopted. The department agrees with the comments and responds that in addition to the required publication of the proposed rules in the *Texas Register*, the department also published them electronically on the department's website (providing an opportunity for comment), distributed the proposed rules to advocacy groups such as the Texas Deer Association and the Texas Wildlife Association, and presented the proposed rules to the department's White-tailed Deer Advisory Board, composed of members of the regulated community. The department considers that sufficient opportu-

nity for comment was provided. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated that the fee increases would threaten the growth of the industry. The department disagrees with the comments and responds that the department's Triple T rules do not and are not intended to regulate an industry, but to regulate the possession by individuals of live deer that are a public resource. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated that the fee increases threatened their ability to stay in business. The department, while sympathetic, disagrees with the comments and responds that the Triple T permit is intended to be a tool for landowners and land managers for better wildlife management, not a vehicle for business enterprises. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated that the Triple T programs should not be just for the rich. The department agrees with the commenters and responds that before purchasing a permit, each potential participant in the program should carefully weigh the risks and benefits of engaging in Triple T activities. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated that the fee increase will drive people the program was designed to help out of the program. The department disagrees with the comments and responds that the intent of the Triple T permit was not created to help any particular class or type of person, but to create a tool for landowners to use to adjust game populations for better wildlife management. No changes were made as a result of the comment.

Eight commenters opposed adoption and stated that the people who need the program the most would not be able to afford to participate. The department disagrees with the comment and responds that there is nobody who needs Triple T permits, only people who choose to use that particular tool to assist in the management of deer populations. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that instead of increasing fees to meet costs, the department should streamline the application process to reduce costs. The department agrees with the comment, and responds that the major expenses associated with the Triple T program are associated not with the application process but with site inspection, compliance verification, and enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fee increase will cause fewer deer to be moved and would therefore lead to overpopulation and habitat degradation. The department disagrees with the comment and responds that the number of deer moved under Triple T permits is statistically and biologically insignificant. Therefore, even if the department were to issue no Triple T permits for many years, there would be no detectable difference in habitat conditions on a landscape scale. The department also notes that although hunting pressure is the best, most cost-effective, and profitable method of population control, landowners and land managers with population problems may also avail themselves of the Managed Lands Deer Permit, the Antlerless and Spike-buck Control Permit, or even the Depredation Permit as a possible solution to overpopulation problems. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fee increases will result in less hunting opportunity on properties that could use more deer but can't afford them. The department disagrees with the commenter and responds that white-tailed deer are by far the most abundant wildlife resource in the state of Texas, and that generally speaking, populations are at or above carrying capacity almost everywhere in the state, the exceptions being those areas where habitat has been severely degraded. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should cut waste before increasing fees. The department agrees with the comment but responds that it does not believe that the current program administration is wasteful. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fee increase would increase the cost of obtaining deer. The department agrees with the comment, but responds that the fee increase is unavoidable. The department also notes that proper habitat management, coupled with a responsible harvest regime, should reduce the need to obtain deer for most landowners in the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will increase permit costs for properties divided by highways, since there would be two release sites. The department disagrees with the comment and responds that the department's rules do not stipulate that a property divided by a highway necessarily constitutes separate release sites. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fee increase will put a financial strain on landowners seeking to supplement the quantity and quality of low density deer herds. The department disagrees with the comment and responds that low-density deer herds are typically the result of habitat degradation or destruction, and that the introduction of additional deer under such circumstances is not biologically prudent. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the cost of prosecuting violators should be borne by the violators, not by law-abiding permit holders. The department agrees with the comment in principle; however, the department does not have the statutory authority to recover the costs of prosecution from individual violators, or to retain revenue from fines within specific programs. Thus, the department considers prosecution costs as a program administration cost and must distribute that cost among all permit holders in order to recover the total costs of administering the program. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department was minimizing the adverse economic impact to permit holders by classifying them as small businesses or micro businesses. The department disagrees with the comment and responds that under Government Code, §2006.002, if a state agency determines that a rule would have an adverse economic effect on small businesses or micro businesses, the agency is required to prepare a statement of the effect of the rule on small businesses and micro businesses before adopting it. Although Triple T permits are issued to individuals, rather than to entities, the department reasoned that some, but not all, individuals who participate in activities covered by a Triple T permit do so in an effort to enhance profit generating hunting operations. To the extent that such operations could be considered small or

micro businesses, the department prepared an impact analysis in order to comply with the relevant provisions of Government Code. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department failed to consider the "potential downstream impact" of the fee increase "on the industry as a whole." The department disagrees with the comment and responds that the Triple T permit is not a regulatory mechanism for an industry, it is a permit issued to individuals to allow the temporary possession of live game animals. Therefore, the department analyzed the direct economic impacts to persons who obtain permits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department did not "take into account the likely discontinuance of current participants," which could result in "reduced overall revenue for the state, as well as the loss of the genetic enhancement to the Texas deer herds." The department disagrees with the comment and responds that the intent of the fee increase is not to generate additional revenue for the state, but to recoup the cost of administering and enforcing the program from program participants. The rule will result in the self-sufficiency of the program, irrespective of how many persons choose to participate in it. The department also responds that there is no scientific evidence to indicate that Triple T activities have any population level impact on the genetic composition of deer herds in the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department seems to discount the consequences of the fee increase on small properties, disregards the impact on larger properties, and "overlooks entirely the potential impact on the industry as a whole." The department disagrees with the comment and responds that although Triple T permits are issued to individuals, rather than to entities, the department reasoned that some, but not all, individuals who participate in activities covered by a Triple T permit do so in an effort to enhance profit generating hunting operations. To the extent that such operations could be considered small or micro businesses, the department prepared an impact analysis in order to comply with the relevant provisions of Government Code. The department also responds that the Triple T permit is not a regulatory mechanism for an industry, it is a permit issued to individuals to allow the temporary possession of live game animals. Therefore, the department analyzed the direct economic impacts to persons who obtain permits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department made an inaccurate statement in the proposal preamble when it stated that there will be no fiscal implications for units of state and local governments other than the department as a result of enforcing or administering the rules. The department disagrees with the comment and responds that the statement is true and accurate to the best of the agency's knowledge. The direct effect of the rule as adopted is to increase the fees paid by individuals who obtain Triple T permits from the department. This will result in a revenue increase for the department, which was addressed in the proposal preamble. The department is unaware of any other direct impacts of the rule as adopted on any other unit of government. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department made an inaccurate statement in the proposal preamble when it stated that the agency determined that the rule as proposed would not impact local economies. The department disagrees with the comment and responds that the statement is true and accurate to the best of the agency's knowledge. The direct economic effect of the rule as adopted is to increase the fees paid by individuals who obtain Triple T permits from the department. The department issued 75 Triple T permits last year. Those permits were issued to 58 individuals and authorized activities in 57 counties. While it is true that the fee increase will result in a direct economic impact to the individual who obtains a permit, the effect on local economies and local employment, if any, would be distributed across a wide geographical and economic landscape and not confined to any particular area or locale. The department also considered that workers typically hired to perform Triple T activities will fall into one of two categories: specialized workers such as helicopter pilots and crew, biologists, and veterinarians, and general labor, such as ranch hands. The department considered that the local economic demand for specialized workers such as biologists, helicopter pilots, and helicopter crews is distributed across many local economies and thus the effect of the fee increase would not be confined to a specific local economy. For workers such as veterinarians, the department considered that Triple T consulting/participation would not be a significant part of a typical veterinary practice, and that it would be unlikely, given the low number and geographic variability of Triple T activities, that the fee increase would cause employment declines in any specific local economy. For workers such as ranch hands, the department considered that such persons are typically employed for a range of duties, and that participation in Triple T permit activities would be ancillary to those considerations. Thus, the department does not believe that the fee increase will impact local economies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department made an inaccurate statement in the proposal preamble when it stated that there would be no difference in the cost of compliance between the largest business affected by the rule and the smallest business affected by the rule. The commenter stated that the adverse economic impact of the fee increase would affect mostly small businesses, as the persons who obtain Triple T permits typically are small businesses. The department disagrees with the comment and responds that under Government Code, §2006.002, if a state agency determines that a rule would have an adverse economic effect on small businesses or micro businesses, the agency is required to prepare a statement of the effect of the rule on small businesses and micro businesses before adopting it. Although Triple T permits are issued to individuals, rather than to entities, the department reasoned that some, but not all, individuals who participate in activities covered by a Triple T permit do so in an effort to enhance profit generating hunting operations. To the extent that such operations could be considered small or micro businesses, the department prepared an impact analysis in order to comply with the relevant provisions of Government Code. The department also determined that since the fee is the same for all users, it will not disproportionately affect any particular user. No changes were made as a result of the comment.

One commenter opposed adoption and stated that larger, more tenured, and more profitable industries with more deer will be affected to a less significant economic degree than a permittee with less profits, less tenure, and a smaller operation with fewer deer. The department disagrees with the comment and responds that the department is not charged by statute or policy with regulating an industry. The department also responds that the fee increase does not in any way affect the ability of any

person to either locate properties where there is an overpopulation of deer (trap sites) or properties where it is biologically harmless to introduce deer (release sites). The department further responds that there is no relationship between the fee increase and the size of any given property; thus, the fee increase is a separate issue for a person seeking to engage in the trapping, transportation, and transplantation of deer and who does not own or have access to suitable properties for obtaining or releasing deer. The department also notes that the commenter seems to be inferring that permittees are engaged in the sale of deer. Under Parks and Wildlife Code, §62.021, it is unlawful to sell, offer for sale, purchase, possess after purchase or possess after purchase a game animal, which includes white-tailed and mule deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is a possible bias on the part of the department in targeting Triple T permits for fee increases because of the perception that "all such landowners are wealthy." The department disagrees with the comment and responds that the sole motivation for the fee increase is the desire to recoup the department's administrative and enforcement costs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is discriminatory, since the department does not impose a fee for other permits, such as the Managed Lands Deer Permit (MLDP) or the Antlerless and Spike-buck Deer Control Permit (ADCP). The department disagrees with the comment and responds that the MLDP program is designed to curb habitat degradation by authorizing a flexible harvest regime. The department determines the appropriate number of deer that should be harvested each year, and the landowner receives an extended harvest period and an enhanced bag limit to accomplish that harvest, which is done under all applicable provisions of the law governing hunting. The Triple T permit, on the other hand, authorizes the possession of live game animals, which are and remain a public resource during the course of all permitted activities. The department must ensure that the public resource is protected, which is why the fees exist. The ADCP is a permit that is intended purely to remedy immediate threats to habitat caused by overpopulations of deer. The department authorizes ADCPs as a last resort, which is evidenced by the fact that only two ADCPS were issued in 2006. No changes were made as a result of the comment.

One commenter opposed adoption and stated that since Triple T activities result in the improvement of hunting opportunity and quality, and since many Triple T holders also hold hunting licenses, that they should also benefit from their license revenue deposited to the Game, Fish, and Water Safety Account (Fund 9) in the same way that MLDP permit holders do, since there is no fee to recover the cost of administering the MLDP and the program is instead funded from Fund 9 revenue. The department disagrees with the comment and responds that the MLDP program is a harvest-driven habitat management program that furthers the agency's mission of emphasizing habitat management. The Triple T program authorizes individuals to possess live game animals. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is selectively implementing the user-pay/user-benefit model and should apply it to MLDPs and not just to the Triple T and DMP permits. The department disagrees with the comment and responds the legislature has not provided the statutory authority for the department to charge a fee for MLDPs, whereas such authority is explicitly granted for both the Triple T and DMP permits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should use Fund 9 revenue to subsidize the Triple T program, because it contributes to "a healthier and more quality herd of white-tailed deer, primarily for hunting purposes." The department disagrees with the comment and responds that it is the policy of the commission that the fees for the Triple T program be established in such a fashion as to recoup the costs of administration and enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's use of the per-employee method of calculating the impact of the rule on small and micro businesses is not accurate or relevant to the characteristics of an industry in which most operations are individually owner or family operated. The department disagrees with the comment and responds that Government Code, §2006.002, provides that for the purposes of analyzing the adverse economic impact on small and micro businesses, an agency may use a comparison of the cost of compliance for small businesses with the cost of compliance for the largest businesses affected by the rule, using one of at three standards, one of which is the cost of compliance for each employee. The department also responds that the Triple T program is not intended to regulate an industry. No changes were made as a result of the comment.

One commenter opposed adoption and stated that increasing fees does not guarantee greater efficiency or clearer and more user-friendly-regulations. The department agrees with the comment, but responds that the rule is intended to recover current administration and enforcement costs, meaning that the since the current fee structure does not recover the cost to the agency of administration and enforcement, it is therefore inefficient by definition. The rules will be clearer, and therefore more user-friendly, because they plainly state that a permit is required for each release site. No changes were made as a result of the comment.

One commenter opposed adoption and stated that since the revenue from Triple T permits is deposited in Fund 9 with revenue from many other sources, the department has no way of knowing if the fee revenues from the permits is actually spent supporting the Triple T program. The department disagrees with the comment and responds that if the revenue recorded is consistent with administration and enforcement expenses, the net result is the same as if the revenue were deposited in a dedicated account. No changes were made as a result of the comment.

The department received 14 comments supporting adoption of the proposed amendment.

The department received 18 comments opposing adoption of the portion of the amendment that affected the fees for the Deer Management Permit (DMP). All 18 commenters expressed a specific rationale for opposing adoption. Those comments, accompanied by the department's responses, follow.

Nine commenters stated that the fee increase is unjustified and unfair. The department disagrees with the comments and responds that the fee increase is justified because the department must follow commission policy in attempting, to the greatest extent possible, to recoup the cost of the program from the users of the program, since it involves permits to possess live game animals. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that the department should delay for further cost/benefit analysis. The department disagrees with the comments and responds that further analysis is unnecessary. The department calculated the cost of administering and enforcing the Triple T program and distributed those costs on a per-permit basis. No changes were made as a result of the comment.

Eleven commenters opposed adoption and stated that permit users should have input before the rules are adopted. The department agrees with the comments and responds that in addition to the required publication of the proposed rules in the *Texas Register*, the department also published them electronically on the department's website (providing an opportunity for comment), distributed the proposed rules to advocacy groups such as the Texas Deer Association and the Texas Wildlife Association, and presented the proposed rules to the department's White-tailed Deer Advisory Board, composed of members of the regulated community. The department considers that sufficient opportunity for comment was provided. No changes were made as a result of the comments.

Nine commenters opposed adoption and stated that the fee increases would threaten the growth of the industry. The department disagrees with the comments and responds that the department's DMP program does not and is not intended to regulate an industry, but to regulate the possession by individuals of live deer that are a public resource. No changes were made as a result of the comments.

Nine commenters opposed adoption and stated that the fee increases threatened their ability to stay in business. The department, while sympathetic, disagrees with the comments and responds that the DMP program is intended to be a tool for landowners and land managers for better wildlife management, not a vehicle for business enterprises. No changes were made as a result of the comments.

Ten commenters opposed adoption and stated that the DMP program should not be just for the rich. The department agrees with the commenters and responds that before purchasing a permit, each potential participant in the program should carefully weigh the risks and benefits of engaging in Triple T activities. No changes were made as a result of the comments.

Nine commenters opposed adoption and stated that the fee increase will drive people the program was designed to help out of the program. The department disagrees with the comments and responds that the DMP was not created to help any particular class or type of person, but to create a tool for landowners and land managers to use to manage deer populations. No changes were made as a result of the comment.

Nine commenters opposed adoption and stated that the people who need program the most would not be able to afford to participate. The department disagrees with the comment and responds that there is nobody who needs DMP permits, only people who choose to use that particular tool to assist in the management of deer populations. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that instead of increasing fees to meet costs, the department should streamline the application process to reduce costs. The department agrees with the comment, and responds that the major expenses associated with the DMP program are associated not with the application process but with site inspection, compliance verification, and enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the cost of prosecuting violators should be borne by the violators, not by law-abiding permit holders. The department agrees with the comment in principle; however, the department does not have the statutory authority to recover the costs of prosecution from individual violators, or to retain revenue from fines within specific programs. Thus, the department considers prosecution costs as a program administration cost and must distribute that cost among all permit holders in order to recover the total costs of administering the program. No changes were made as a result of the comment.

One commenter opposed adoption and stated that increasing the fees will increase the cost of hunting. The department disagrees with the comment and responds that the cost of hunting opportunity is a matter between hunters and landowners and does not involve the department; however, the department does not believe that the cost of a DMP will, in and of itself, cause the cost of hunting to increase. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be more restrictions on penned wildlife, not less. The department disagrees with the comment and responds that the possession of live game animals is sufficiently regulated. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department was minimizing the adverse economic impact to permit holders by classifying them as small businesses or micro businesses. The department disagrees with the comment and responds that under Government Code, §2006.002, if a state agency determines that a rule would have an adverse economic effect on small businesses or micro businesses, the agency is required to prepare a statement of the effect of the rule on small businesses and micro businesses before adopting it. Although DMPs are issued to individuals, rather than to entities, the department reasoned that some, but not all, individuals who participate in activities covered by a DMP do so in an effort to enhance profit-generating hunting operations. To the extent that such operations could be considered small or micro businesses, the department prepared an impact analysis in order to comply with the relevant provisions of Government Code. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department failed to consider the "potential downstream impact" of the fee increase "on the industry as a whole." The department disagrees with the comment and responds that the DMP is not a regulatory mechanism for an industry, it is a permit issued to individuals to allow the temporary possession of live game animals. Therefore, the department analyzed the direct economic impacts to persons who obtain permits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department did not "take into account the likely discontinuance of current participants," which could result in "reduced overall revenue for the state, as well as the loss of the genetic enhancement to the Texas deer herds." The department disagrees with the comment and responds that the intent of the fee increase is not to generate additional revenue for the state, but to recoup the cost of administering and enforcing the program from program participants. The rule will result in the self-sufficiency of the pro-

gram, irrespective of how many persons choose to participate in it. The department also responds that there is no scientific evidence to indicate that DMP activities have any impact on the genetic structure of deer herds in the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department seems to discount the consequences of the fee increase on small properties, disregards the impact on larger properties, and "overlooks entirely the potential impact on the industry as a whole." The department disagrees with the comment and responds that although DMPs are issued to individuals, rather than to entities, the department reasoned that some, but not all, individuals who participate in activities covered by a DMP do so in an effort to enhance profit-generating hunting operations. To the extent that such operations could be considered small or micro businesses, the department prepared an impact analysis in order to comply with the relevant provisions of Government Code. The department also responds that the DMP is not a regulatory mechanism for an industry, it is a permit issued to individuals to allow the temporary possession of live game animals. Therefore, the department analyzed the direct economic impacts to persons who obtain permits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department made an inaccurate statement in the proposal preamble when it stated that there will be no fiscal implications for units of state and local governments other than the department as a result of enforcing or administering the rules. The department disagrees with the comment and responds that the statement is true and accurate to the best of the agency's knowledge. The direct effect of the rule as adopted is to increase the fees paid by individuals who obtain DMPs from the department. This will result in a revenue increase for the department, which was addressed in the proposal preamble. The department is unaware of any other direct impacts of the rule as adopted on any other unit of government. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department made an inaccurate statement in the proposal preamble when it stated that the agency determined that the rule as proposed would not impact local economies. The department disagrees with the comment and responds that the statement is true and accurate to the best of the agency's knowledge. The direct economic effect of the rule as adopted is to increase the fees paid by individuals who obtain DMPs from the department. The department issued 78 DMPs last year. Those permits were issued 73 individuals and authorized activities in 30 counties. While it is true that the fee increase will result in a direct economic impact to the individual who obtains a permit, the effect on local economies and local employment, if any, would be distributed across a wide geographical and economic landscape and not confined to any particular area or locale. The department also considered that workers typically hired to perform DMP activities will fall into one of two categories: specialized workers such as biologists and veterinarians, and general labor, such as ranch hands. The department considered that the local economic demand for specialized workers such as biologists is distributed across many local economies and thus the effect of the fee increase would not be confined to a specific local economy. For workers such as veterinarians, the department considered that DMP consulting/participation would not be a significant part of a typical veterinary practice, and that it would be unlikely, given the low number and geographic variability of DMP activities, that the fee increase would cause employment declines in any specific local economy. For workers such as ranch hands, the department considered that such persons are typically employed for a range of duties, and that participation in DMP activities would be ancillary to those considerations. Thus, the department does not believe that the fee increase will impact local economies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department made an inaccurate statement in the proposal preamble when it stated that there would be no difference in the cost of compliance between the largest business affected by the rule and the smallest business affected by the rule. The commenter stated that the adverse economic impact of the fee increase would affect mostly small businesses, as the persons who obtain DMPs typically are small businesses. The department disagrees with the comment and responds that under Government Code, §2006.002, if a state agency determines that a rule would have an adverse economic effect on small businesses or micro businesses, the agency is required to prepare a statement of the effect of the rule on small businesses and micro businesses before adopting it. Although DMPs are issued to individuals, rather than to entities, the department reasoned that some, but not all, individuals who participate in activities covered by a DMP do so in an effort to enhance profit generating hunting operations. To the extent that such operations could be considered small or micro businesses, the department prepared an impact analysis in order to comply with the relevant provisions of Government Code. The department also determined that since the fee is the same for all users, it will not disproportionately affect any particular user. No changes were made as a result of the comment.

One commenter opposed adoption and stated that larger, more tenured, and more profitable industries with more deer will be affected to a less significant economic degree than a permittee with less profits, less tenure, and a smaller operation with fewer deer. The department disagrees with the comment and responds that the department is not charged by statute or policy with regulating an industry. The department further responds that there is no relationship between the fee increase and the size of any given property; thus, the fee increase is a separate issue for a person seeking to engage in DMP activities. The department also notes that it has no control over how much or how little property a person may control. The department also notes that the commenter seems to be inferring that permittees are engaged in the sale of deer. Under Parks and Wildlife Code, §62.021, it is unlawful to sell, offer for sale, purchase, possess after purchase or possess after purchase a game animal, which includes white-tailed and mule deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is a possible bias on the part of the department in targeting DMPs for fee increases because of the perception that "all such landowners are wealthy." The department disagrees with the comment and responds that the sole motivation for the fee increase is the desire to recoup the department's administrative and enforcement costs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is discriminatory, since the department does not impose a fee for other permits, such as the Managed Lands Deer Permit (MLDP) or the Antlerless and Spike-buck Deer Control Permit (ADCP). The department disagrees with the comment and responds that the MLDP program is designed to curb habitat degradation by authorizing a flexible harvest regime. The department determines

the appropriate number of deer that should be harvested each year, and the landowner receives an extended harvest period and an enhanced bag limit to accomplish that harvest, which is done under all applicable provisions of the law governing hunting. The DMP, on the other hand, authorizes the possession of live game animals, which are and remain a public resource during the course of all permitted activities. The department must ensure that the public resource is protected, which is why the fees exist. The ADCP is a permit that is intended purely to remedy immediate threats to habitat caused by overpopulations of deer. The department authorizes ADCPs as a last resort, which is evidenced by the fact that only two ADCPS were issued in 2006. No changes were made as a result of the comment.

One commenter opposed adoption and stated that since DMP activities result in the improvement of hunting opportunity and quality, and since many DMP holders also hold hunting licenses, that they should also benefit from their license revenue deposited to the Game, Fish, and Water Safety Account (Fund 9) in the same way that MLDP permit holders do, since there is no fee to recover the cost of administering the MLDP and the program is instead funded from Fund 9 revenue. The department disagrees with the comment and responds that the MLDP program is a harvest-driven habitat management program that furthers the agency's mission of emphasizing habitat management. The DMP program authorizes individuals to possess live game animals. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is selectively implementing the user-pay/user-benefit model and should apply it to MLDPs and not just to the Triple T and DMP permits. The department disagrees with the comment and responds the legislature has not provided the statutory authority for the department to charge a fee for MLDPs, whereas such authority is explicitly granted for both the Triple T and DMP permits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should use Fund 9 revenue to subsidize the DMP program, because it contributes to "a healthier and more quality herd of white-tailed deer, primarily for hunting purposes." The department disagrees with the comment and responds that it is the policy of the commission that the fees for the DMP program be established in such a fashion as to recoup the costs of administration and enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's use of the per-employee method of calculating the impact of the rule on small and micro businesses is not accurate or relevant to the characteristics of an industry in which most operations are individually owner or family operated. The department disagrees with the comment and responds that Government Code, §2006.002, provides that for the purposes of analyzing the adverse economic impact on small and micro businesses, an agency may use a comparison of the cost of compliance for small businesses with the cost of compliance for the largest businesses affected by the rule, using one of at three standards, one of which is the cost of compliance for each employee. The department also responds that the DMP program is not intended to regulate an industry. No changes were made as a result of the comment.

One commenter opposed adoption and stated that increasing fees does not guarantee greater efficiency or clearer and more user-friendly-regulations. The department agrees with the comment, but responds that the rule is intended to recover current administration and enforcement costs, meaning that the since the current fee structure does not recover the cost to the agency of administration and enforcement, it is therefore inefficient by definition. The rules will be clearer and more user-friendly, because they make compliance less onerous and afford permittees more flexibility to conduct some permit operations than is currently possible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that since the revenue from DMPs is deposited in Fund 9 with revenue from many other sources, the department has no way of knowing if the fee revenues from the permits is actually spent supporting the DMP program. The department disagrees with the comment and responds that if the revenue recorded is consistent with administration and enforcement expenses, the net result is the same as if the revenue were deposited in a dedicated account. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no statutory requirement for the department to recover the administrative and enforcement costs of the Triple T permit. The department agrees with the comment, but responds that under Parks and Wildlife Code, §43.603, the department shall set a fee for a DMP in an amount not to exceed $1,000. No changes were made as a result of the comment.

The department received 14 comments supporting adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the code; Chapter 43, Subchapter R, which authorizes the commission to issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer, and requires the commission to set a fee for the issuance or renewal of a permit in an amount not to exceed $1,000; and Chapter 43, Subchapter E, which authorizes the commission to issue permits to trap, transport and transplant of game animals and game birds, to issue permits for urban white-tailed deer removal and to establish a fee for those permits.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702720
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: July 18, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 389-4775

CHAPTER 59. PARKS
SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §59.3

The Texas Parks and Wildlife Commission adopts an amendment to §59.3, concerning Activity and Facility Use Fees, without changes to the proposed text as published in the April 20, 2007, issue of the *Texas Register* (32 TexReg 2251).

The amendment incorporates special access permit fees as part of state park regulations. In a notice of adoption published elsewhere in this issue of the *Texas Register*, the department has created a special access permit valid for access to state parks for person selected to participate in public hunting activities. The department wishes to differentiate between special permits issued for use on state parks and special permits issued for use on other units of public hunting lands such as wildlife management areas. The amendment to §59.3 is necessary in order to comply with federal requirements that oblige the department to keep funds from the sale of permits for access to state parks separate from funds from the sale of permits for access to wildlife management areas. The amendment explicitly acknowledges that distinction by rule. The effect of the adopted amendment would be nonsubstantive; it does not create a new fee and does not impose the existing fee on additional users.

The amendment will function by administratively segregating revenues from permits for various public hunting activities.

The department received no comments concerning adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §11.027, which authorizes the commission by rule to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department, and §13.015, which authorizes the department to charge and collect park user fees for park services, and requires the commission to set the fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702722
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: July 18, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Commission (the department) adopts amendments to §§65.3, 65.9, 65.10, 65.25, 65.34, 65.42, 65.44, 65.64, 65.72, and 65.82, concerning the Statewide Hunting and Fishing Proclamation. Sections 65.3, 65.64, 65.72, and 65.82 are adopted with changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1026). Sections 65.9, 65.10, 65.25, 65.34, 65.42, and 65.44 are adopted without changes and will not be republished.

The change to §65.3, concerning Definitions, adds a definition of "inside waters." The definition is necessary because the department is clarifying the geographical dimensions of the area in which special spotted seatrout regulations apply. Rather than trying to describe that area by naming the various bays, passes, and channels that are contained within it, the department has chosen to use the definition of "inside waters" from the department's shrimp rules, which accomplishes the same thing in a much clearer and unambiguous fashion.

The change to §65.64 opens the general spring turkey season in the North Zone on the Saturday closest to April 1, instead of the proposed date of the Saturday closest to April 7. The change is necessary as a result of public comment. The department has determined that the current opening date is preferred by hunters and that there is no threat of depletion or waste of the resource as a result of retaining the current opening day.

The change to §65.72 alters subsection (a)(4)(F) to prohibit the use of vessels to harass fish. The rule as proposed would have prohibited the use of vessels to "pursue, harass, or harry" fish; however, it was pointed out that fishing in itself involves the pursuit of fish. The change is necessary to prevent confusion.

The change to §65.72 also alters subsection (b)(2)(C) to allow for one tarpon 85 inches or longer to be retained per year. The proposed amendment would have implemented a catch-and-release only fishery for tarpon. Public comment convinced the department that the current bag limit of one fish per year set to the current state record for the largest tarpon would effectively protect tarpon populations from overharvest while still allowing anglers to catch, weigh, and qualify for a record under current state guidelines.

The change to §65.72(b)(2)(C) also retains the current 15-inch size limit for red snapper. The proposed amendment would have implemented a 13-inch size limit; however, in reviewing public comment and additional data, the department has determined that the provision requiring the use of circle hooks will be sufficient to protect red snapper populations. The size limit will not be changed at this time due to the inconsistency this would create with size limits in federal waters.

The change to §65.72 also rewords subsection (b)(2)(D)(ii) to alter the description of the boundaries within which special spotted seatrout rules apply. As proposed, the rule would have implemented a five-fish daily bag limit for spotted seatrout within a prescribed geographical area. In reviewing public comment, the department determined that the geographical boundaries could be more precisely delineated.

The change to §65.82, concerning Other Aquatic Life, removes the proposed exception for the take or possession of diamondback terrapin by persons holding a nongame or nongame dealer permit. The change is necessary because recent action by the Texas Parks and Wildlife Commission altered the regulations governing commercial nongame permits to specifically exempt diamondback terrapin from applicability of those rules.

The amendment to §65.3, concerning Definitions, clarifies terminology for the definitions of 'coastal waters boundary' and 'final processing,' and add definitions of 'circle hook,' 'charter vessel,' and 'headboat.' The current definition of the boundaries of the state's coastal waters in every instance refers to 'coastal water,' except for a single reference to 'saltwater.' To avoid confusion, the term should be consistent throughout the rule, so the reference to saltwater has been replaced. The current definition of 'final processing' does not reflect a statutory provision (Parks and Wildlife Code, §42.001(5)) that applies only to deer and antelope, giving the impression that the current definition applies

to all wildlife resources. To prevent confusion, the amendment adds the statutory definition for deer and antelope.

The addition of definitions for 'circle hook,' 'charter vessel,' and 'headboat' defines those terms for the purposes of compliance with and enforcement of the amendment to §65.72 that alters rules affecting the red snapper fishery. The definition of 'circle hook' is necessary because the department has prohibited all hooks other than the circle hook for the take of red snapper.

Additionally, the amendment to §65.72 incorporates the federal Individual Fishing Quota (IFQ) rules for the commercial take of red snapper. The IFQ is a form of limited access that assigns a fixed share of the total allowable catch to each user of the resource. The percentage share is based on historical catches in a particular time period. With each landing, poundage from the quota is debited from the individual's IFQ account. The IFQ program is mandated by federal law for all vessels and persons engaged in the commercial harvest of red snapper in federal waters. The incorporation of the federal rules in the Texas Administrative Code allows the department to prosecute violations of the rules in state jurisdictions. Since the federal IFQ system contains provisions governing vessels (headboats and charter vessels) that simultaneously engage in both commercial and recreational fishing, those terms must be defined in order for the regulated community to understand the applicability of the rules to their various activities.

The amendment to §65.3 also updates the reference to the title of the American Fisheries Society publication used to determine fish names. The new title of that publication is "Common and Scientific Names of Fishes from the United States, Canada, and Mexico."

The amendment to §65.9, concerning Open Seasons: General Rules, eliminates subsection (d), which by its own terms ceased effect on September 1, 2003 and is thus no longer necessary.

The amendment to §65.10(b) eliminates the 'double tagging' requirement for mule deer taken under an antlerless mule deer permit. In previous rulemakings, the department eliminated 'double tagging' for white-tailed deer, which was caused by overlapping regulatory requirements that obligated hunters to provide the same information on multiple tags and documents. With the expansion of the managed lands permit program to encompass mule deer, the department inadvertently neglected to provide for the elimination of 'double tagging' of mule deer. The amendment is necessary to streamline the tagging process and make it consistent for all deer taken by special permit.

The amendment to §65.10(f) requires taxidermists to retain a wildlife resource document (WRD) or tag for each deer or turkey in possession for a period of at least two years following the return of the specimen to the owner or, if the owner abandons it, the sale for recovery of the cost of taxidermy. Under Parks and Wildlife Code, §42.018 and §42.0185, the tagging requirements for deer or turkey allow for the use of a WRD in lieu of a tag under certain circumstances, including when deer and turkey are left with a taxidermist. Under §42.0177, the commission may modify or eliminate those requirements. By statute (Parks and Wildlife Code, §62.023), a taxidermist may sell unclaimed specimens to recover the cost of the taxidermy, and is required to retain the WRD or tag for a period of two years from the date the taxidermy was completed. The two-year time period is the statute of limitations for a Class C misdemeanor. By starting the two-year retention period from the time a specimen is returned to the owner or sold (rather than when the taxidermy is completed), the department will always have the maximum amount of time to conduct an investigation when it is necessary to determine whether deer or turkey taken to a taxidermist have been lawfully taken.

The amendment to §65.25, concerning Wildlife Management Plan (WMP), alters the provisions of the section applicable to lesser prairie chicken and creates additional provisions concerning javelina. With respect to lesser prairie chicken, the amendment to subsection (b) reduces the number of required management practices from five to three, increases the maximum designated harvest from up to five percent of the estimated lesser prairie chicken population on the property to up to 10 percent of that estimate, and adds a requirement for a harvest log to be maintained on the property. The intent of the amendment is to give field staff more flexibility to encourage landowners to participate in management programs for lesser prairie chicken. The department has determined that most landowners interested in the program are already conducting some or many practices that are beneficial to lesser prairie chicken; therefore, the number of required practices may be reduced. Because of the breeding behavior of lesser prairie chickens and their large home ranges, habitat components for any given population are typically provided by several landowners. For example, nesting and feeding areas may be on one property, while the breeding ground is on another. Variability in property sizes can make management challenging, especially when birds are spending only a small portion of their time on a given habitat component, such as the breeding ground. Increasing the harvest rate will allow field biologists to make issuance of harvest quotas for lesser prairie chicken more equitable for landowners in the program. Harvest at or below 10% of the estimated total population will not result in depletion of the resource, since the post-harvest reproductive potential is more than sufficient to offset or replace harvest mortality. The harvest log requirement is necessary to maintain a record of harvest so the department can determine compliance with harvest quotas. The amendment also alters subsection (b)(1)(E) by inserting the word 'quota' to clarify that the harvest recommendation is in fact a limit.

With respect to javelina, the amendment to §65.25 adds new subsection (c) to create a mechanism to allow the harvest of javelina by quota on individual properties under a department-approved management plan. Javelina are common across southern and western Texas, but are not uniformly distributed over their natural range. Although department data indicate a possible downward trend across their range, javelina populations are stable or thriving where habitat is good, particularly along drainages where there is abundant vegetation and cover. Thus, in many areas javelina exist in densities sufficient to sustain additional hunting pressure in excess of the current personal bag and possession limits, provided the total harvest does not cause local populations to fall below their immediate recuperative potential. The amendment also allows the department to establish an annual harvest quota for javelina on a given property and the normal bag and possession limits would no longer apply. The amendment also requires a habitat evaluation, habitat management practices, a harvest log, and population and harvest data for javelina on each property where javelina are to be hunted. By establishing a finite, resource-dependent harvest quota, the department is assured that harvest will not exceed biologically acceptable levels. By collecting valuable biological information on a property-by-property basis, the department will be able to acquire useful biological data concerning javelina populations.

The amendment to §65.34, concerning Managed Lands Deer Permits (MLDP)--Mule Deer, allows the take of mule deer by MLDP during the archery-only open season. When the MLDP program was expanded to include mule deer, the department inadvertently did not provide for an archery-only open season on properties receiving mule deer MLDPs. Under the MLDP program, a participating property receives a finite harvest quota and a specific time period in which to harvest the specified number of animals. The implementation of an archery season will not be additive to the harvest quota. The amendment is necessary because there is no biological reason not to provide an archery season for mule deer on properties participating in the MLDP program for mule deer.

The amendment to §65.42, concerning Deer, addresses several issues. The amendment to subsection (a) clarifies that no person is authorized to exceed a county bag limit except as provided in the section. The amendment to subsection (a)(5) allows a person to take an antlerless mule deer under an antlerless mule deer permit without also having to tag the deer with a tag from the person's hunting license. The amendment is necessary to prevent hunters from being inconvenienced by "double tagging," having to tag a deer with multiple tags bearing the same information.

The amendment to §65.42(b)(17) and (c)(5) would extend the statewide archery-only season by five days. Historically, the archery season has always closed the Sunday before the opening of the general season. The change eliminates the current five-day gap between the end of the archery season and the beginning of the general season. The amendment is necessary to follow the commission's policy of providing the maximum hunting opportunity possible.

The amendment to §65.42(b)(5) - (9) clarifies the rules concerning the take of buck deer in counties where antler restrictions are in effect. In those counties, a lawful buck is defined as a buck that has an inside antler spread of 13 inches or greater or a buck that has at least one unbranched antler. A hunter may take two bucks, but only one of them may have an inside antler spread of 13 inches or greater. The amendment is necessary because the current rule does not provide for the instance in which a hunter kills a spike-buck deer with an inside spread of greater than 13 inches. The amendment would make it clear that the antler spread of a buck with an unbranched antler is irrelevant.

The amendment to §65.42(b)(13)(D) clarifies that antlerless deer may be taken without a permit anywhere in Grayson County during the 'doe days' in effect in the county.

The amendment to §65.44, concerning Javelina: Seasons and Annual Bag Limits, inserts clarifying language to prevent conflicts with the adopted amendment to §65.25.

The amendment to §65.64, concerning Turkey, alters subsection (b)(3) to change the spring season dates for Rio Grande turkey. In 2005, the department lengthened the season and created a uniform opening day in all counties. In analyzing the results of that change, the department has determined that additional hunting opportunity can be provided without resulting in depletion or waste of the resource. The amendment starts the season approximately two weeks earlier (the Saturday closest to March 18) in counties in the southern Edwards Plateau, South Texas, and the Trans-Pecos. The amendment allows hunters in the southern Edwards Plateau, South Texas, and the Trans-Pecos to take advantage of peak gobbling activity, which often varies annually depending on weather conditions. Since the spring Rio Grande hunting season is limited to only male birds (gobblers) there is little harm to turkey production, unless hunting activities disrupt the breeding behavior of the turkeys. The new opening date will allow hunters to be in the field when peak gobbling occurs. The amendment is necessary in order to follow the commission's policy of providing the maximum opportunity possible within the tenets of sound biological management. In selecting the counties affected by the amendment, the department included three counties (Guadalupe, DeWitt, and Victoria) where the spring bag limit is currently one gobbler. In 1996, the department reduced the spring season bag limit in those counties due to population concerns. The department has determined that the populations in those counties are now able to withstand additional harvest.

The amendment also would extend the statewide archery-only season for turkey by five days, for the same reasons discussed for the extension of the archery season for deer.

The amendment to §65.72, concerning Fish, consists of a number of actions. The amendment would alter subsection (a) to exempt persons engaged in offshore aquaculture from the size and bag limits established for the recreational fishery. The action is necessary to clarify that fish being reared in lawful aquaculture facilities would be allowed to be possessed and landed without violating the recreational limits for those species.

The amendment to §65.72(a) also would allow the use of catfish heads as bait in crab traps by commercial crab fishermen, provided the catfish were obtained from a permitted aquaculturist in the United States. The purpose of the prohibition of the use of game fish for bait is to prevent the use of undersized game fish as bait. However, catfish heads are good bait for crab traps, and aquaculture facilities typically have no use for catfish heads following harvest. By restricting the use of catfish to heads only and requiring crab fisherman who do use them to be able to document their origin, the department believes protection for game species will not be affected.

The amendment to §65.72(a) also would prohibit the use of any vessel to harass fish. The current rule prohibits the use of airboats or jet-driven devices to harass or harry fish. At the time the current rule was adopted, only certain types of vessels were capable of traversing water shallow enough to allow the herding of fish; however, newer hull and engine designs allow many vessels to access very shallow water and occurrences of this kind of activity are growing. Fish that are artificially concentrated into small areas are more susceptible to anglers than those that are not concentrated, despite otherwise effective restrictions. Under Parks and Wildlife Code, §61.002, the purpose of the chapter is to provide a comprehensive method for the conservation of an ample supply of wildlife resources on a statewide basis to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources. Harrying fish with vessels is considered an artificial method of concentration that deprives other anglers of the opportunity for equitable enjoyment of the resource.

The amendment to §65.72(a) also would incorporate federal regulations governing the Individual Fishing Quota program in state regulations. Federal rules require a federal permit for the harvest of Gulf of Mexico Reef Fish and a federal red snapper Individual Fishing Quota (IFQ) vessel endorsement. This change is necessary to allow enforcement of these requirements in state as well as federal court and to insure that fish landed in Texas are not in contravention of federal limits.

The amendment to §65.72 would alter the provisions of subsection (b)(2)(C) to increase the size limit for sheepshead from 12 inches to 15 inches over a three-year period. The current size limit was implemented 15 years ago and was selected to maintain consistency with other, similar size limits, based on the life history research known about sheepshead at the time. Recent biological research suggests that the 15-inch limit would provide better protection for sheepshead, allowing a higher percentage of fish to reach sexual maturity and achieve the age at first spawn. Since the growth rate of sheepshead is relatively slow, increasing the size limit by one inch per year balances greater protection via size limits against the impacts of size limits on recreational landings. Increasing the size limit by one inch per year over the next three years will achieve the protection needed and minimize the impact to recreational landings. The amendment is necessary to ensure the sustainability of the fishery with minimal impact on current landings.

The amendment to §65.72(b)(2)(C) also increases the minimum length limit for tarpon to 85". Under current rule there is a bag limit of one tarpon of 80" or longer per person per year. Tarpon become reproductively mature at around 10 years of age (approximately 4 feet in length). While individual females are relative fecund, the survival rate of young is poor compared to other species of saltwater fish because its unusual life history involves multiple larval stages, all susceptible to predation. By increasing the minimum length to the equivalent of a state record for size, the department will reduce an already conservative harvest while allowing anglers the opportunity to retain and qualify fish for a state record under the current guidelines.

The amendment to §65.72(b)(2)(D) increases the possession limit for striped bass on Lake Texoma from 10 to 20. The change will reduce angler confusion with respect to fish landed in Texas and creates a more standardized regulation with Oklahoma, without resulting in any negative impacts on the resource or the angling community. The current possession limit on Lake Texoma (10 fish) is identical to the daily bag limit, which differs from the statewide regulations that generally establish the possession limit as twice the daily bag limit. The Oklahoma possession limit is 20 fish, with special exceptions.

The amendment to §65.72(b)(2)(D) regionalizes spotted seatrout regulations by reducing bag and possession limits for spotted seatrout in the lower Laguna Madre (LLM). The amendment lowers the daily bag limit in the LLM from 10 to 5, and the possession limit will be the same as the daily bag limit. Surveys and modeling have suggested a relatively long downward trend in overall abundance of spotted seatrout and a decrease in the spawning stock biomass in the LLM. Population size in this bay system is at or slightly below those found elsewhere along the coast, but it is significantly lower than in the recent past. Based on bag seine sampling in the LLM there is constant recruitment into the LLM fishery. Gill-net sampling by the department indicates that while the same or even slightly greater abundance of fish are reaching the size classes that are susceptible to sampling with the gill nets (based on gear selectivity), a smaller proportion of those fish are reaching the larger size classes as compared to previous time periods. These larger size classes of fish are being harvested out of the system and this is causing the overall declining relative abundance in the population and could start to impact the reproductive potential of the population. Modeling has indicated a substantial improvement would be possible in a relatively short period of time if these trends were to be addressed now. This amendment is necessary to stop and reverse current total abundance and spawning biomass trends in the LLM.

The amendment also inserts a statement in §65.72(b)(2)(C) to clarify that the provisions of subparagraph (D) of that paragraph are exceptions to the provisions of subparagraph (C) of that paragraph. The amendment is necessary for the sake of clarity.

The amendment also extends for one year the provision allowing the harvest of catfish by means of lawful archery equipment and crossbow. The amendment is necessary because the department is still in the process of evaluating the impact of the current regulation on catfish populations.

The amendment to §65.82 prohibits the take or possession of diamondback terrapin. The impact of direct or incidental take and accidental mortality on diamondback terrapins is a concern, and research indicates that the species is in a declining population trend across much of its range. The amendment is necessary to manage the species and allow for successful perpetuation.

The department received 114 comments opposed to the adoption of the amendment to §65.64 that would have established the opening day for spring turkey season in north and north-central Texas counties (hereafter, the North Zone) on the Saturday closest to April 7. Thirty commenters stated a specific reason or rationale for opposing adoption. Those comments, accompanied by the agency's response, are as follows.

Ten commenters opposed adoption and stated a preference for an unspecified opening day in the North Zone, provided it was earlier than the Saturday closes to April 7. Seven commenters stated a preference for an opening day one week earlier than the Saturday closest to April 7 in the North Zone. Nine commenters stated a preference for an opening day two weeks earlier than the Saturday closest to April 7 in the North Zone. The agency agrees with the comments generally, inasmuch as an opener earlier than April 7 seems to be the preference of most hunters. The option least likely to result in depletion or waste of the resource is the current opening date. Therefore, the department has retained the season structure currently in effect, beginning the Saturday closest to April 1 and running for 44 consecutive days.

Two commenters opposed adoption and stated there should be a single, statewide spring turkey season. The agency disagrees and responds a single-season structure was implemented last year in an effort to create a simpler regulation. In analyzing the results of that season, the department determined that although there may be years in which peak gobbling activity occurs at roughly the same time in South Texas and in North Texas, there was a significant probability that most years will see a pronounced difference. Data obtained from a study in South Carolina indicated that peak gobbling activity sometimes does not occur until mid-May, and it was thought that central and north-central Texas would experience this type of chronology more frequently than it would occur in South Texas. However, due to the overwhelming preference of hunters for an opener earlier than April 7, and the fact that the current opening date does has not and will not result in either depletion or waste of the resource, the department has determined that maintaining the current opening date in the North Zone is the most prudent course of action. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the opener in South Texas was too early and would interfere with reproduction. The department disagrees with the comment and responds that the likelihood of reproductive disruption is low, because the

harvest is gobblers-only and harvest mortality would have to be in excess of 50 per cent of the total male population in order to introduce reproductive decline. No changes were made as a result of the comment.

The department received 76 comments supporting adoption of the proposed amendment.

The department received 14 comments opposing adoption of the proposed amendment that would implement the archery-only season for deer and turkey on properties where Managed Lands Deer Permits (MLDP) have been issued for mule deer. Of the 14 comments, four expressed a specific rationale or explanation for opposing adoption. All four commenters expressed philosophical disapproval of the MLDP concept, rather than opposition to the amendment as published. The department disagrees with the comments and responds that there is no reason to eliminate the MLDP program rather than the double-tagging requirements. No changes were made as a result of the comments.

The department received 91 comments supporting adoption of the proposed amendment.

The department received 53 comments opposing adoption of the proposed amendment that would eliminate the five-day gap between the end of the archery-only open season and the beginning of the general seasons for deer and turkey. Of the 42 comments, 16 stated a rationale or explanation for opposition. Those comments, accompanied by the agency's response to each, are as follows.

One commenter opposed adoption and stated that continuous hunting from the opening of the archery-only season until the end of the general season was not good management. The department disagrees with the comment and responds that seasons, bag limits, and harvest quotas are designed so as not to result in excessive harvest. There is no region of the state where the deer harvest threatens depletion of the resource, and due to the low hunter success of archery hunting (compared to firearms), the additional five days of archery hunting will not result an appreciable increase in harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department was catering to special interests. The department disagrees with the comment and responds that under Parks and Wildlife Code, §61.002, one of the purposes of that chapter is to "insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources." The department estimates that there are approximately 70,000 archers in Texas, and the extension of the archery-only season by five days is in the department's view reasonable when compared to the three-month general season during which hunters may take deer by firearms. No changes were made as a result of the comment.

Ten commenters opposed adoption and stated that the amendment would not allow deer to settle down before the general open season on public lands. The department disagrees with the comment and responds that there is no biological evidence the department is aware of to suggest that starting the general season the day after the archery-only season would have any adverse impact in the resource. No changes were made as a result of the comments.

One commenter opposed adoption and stated that non-archers needed time to get their camps set up prior to the opening of the general season. The commenter stated that this cannot be done safely if the archery-only season is open and that it (the preparation of camps) would interfere with archers' activities. The department disagrees with the comment and responds that the department does not believe there is a safety issue associated with regulatory restrictions upon means and methods, and in any case, the department does not possess the statutory authority to establish season dates based on safety. No changes were made as a result of the comment.

One commenter opposed adoption and stated that five days should be added to the end of the general season, just to be fair. The department disagrees with the comment and responds that because there are approximately 70,000 archers in Texas, the extension of the archery-only season by five days is in the department's view reasonable when compared to the three-month general season during which hunters may take deer by firearm. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the elimination of the five-day gap would cause more poaching, or that people would shoot deer with a rifle during the archery season and then wait until the general season to bring them in. The department disagrees with the comment and responds that the presence or absence of an interval between the archery and general seasons has no bearing on anyone's conscious decision to violate the law. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the five-day period should be a muzzleloader-only season. The department disagrees with the comment and responds that because muzzleloading firearms are lawful during the three-month general season, there is ample opportunity for muzzleloader enthusiasts. The department also notes that there is a nine-day season muzzleloader season following the general season in some Pineywoods and West Texas counties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that eliminating the five-day gap would cause enforcement problems. The department disagrees with the comment and responds that there is no reason to believe that the rule as adopted cannot be enforced. No changes were made as a result of the comment.

The department received 168 comments supporting adoption of the proposed amendment.

The department received eight comments opposing adoption of the amendment that would decrease the number of management activities required under a management plan for lesser prairie chicken and increase the allowable harvest for lesser prairie chicken on properties under an approved management plan. Of the eight commenters, one articulated a rationale or explanation for opposition. The commenter stated that the amendment did nothing for the average hunter and was intended only to benefit wealthy landowners. The department disagrees with the comment and responds that the intent of the rule as adopted is to encourage greater participation by landowners in the department's efforts to effectively manage lesser prairie chicken populations. By offering harvest incentives that are not inconsistent with sound management in exchange for more intensive habitat management, the department believes that the interests of the resource and the public are better served than they would be by simply closing the season. No changes were made as a result of the comment.

The department received 56 comments supporting adoption of the proposed amendment.

The department received 50 comments opposing adoption of the proposed amendment to allow the harvest of javelina by annual harvest quota on properties under a department-approved management plan. Of the 47 comments, 19 stated a rationale or explanation for opposition. Those comments, accompanied by the agency's response to each, are as follows.

Three commenters opposed adoption and stated that the amendment helped a few landowners, but not the resource or the public. The department disagrees with the comment and responds that responsible management is a good thing, no matter where it occurs. For those landowners with healthy habitat and robust javelina populations and who are willing to enter into a habitat management agreement with the department, there is no reason not to permit a reconfigured and biologically sound harvest opportunity.

Two commenters opposed adoption and stated that javelina populations are too low. The department disagrees with the comment and responds that although department data indicates a downward population trend for javelinas across the entirety of their range, this is not true for specific areas within their range. The department does not intend to authorize any harvest quota that would be inconsistent with sound biological management. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that the amendment is just a way for landowners to get rid of nuisance javelinas. The department disagrees with the comment and responds that there are already methods for receiving permits for the removal of nuisance wildlife. The amendment as adopted is intended to provide tools to landowners interested in managing javelina populations. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that it would lead to more paperwork. The department disagrees with the comment and responds that although a written wildlife management plan is required to qualify for enhanced harvest opportunity, the department does not regard that requirement as onerous and there is no additional paperwork required. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the javelina population isn't in any danger, the amendment imposes unnecessary restrictions. The department disagrees with the comment and responds that department data indicates a downward population trend for javelinas in some parts of their range. Removing all restrictions to javelina harvest would be irresponsible and would lead to depletion of the resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that hunter access is the key to managing a javelina herd and increasing the overall number of hunters to provide funding for the department. The department disagrees with the comment and responds that the amendment as adopted is intended only to provide landowners with tools to manage wildlife populations; the decision to provide hunting opportunity rests entirely with the landowner. No changes were made as a result of the comment.

One commenter opposed adoption and stated that more study is needed. The department agrees with the comment, but disagrees that the amendment as adopted is unsupported by biological science. The careful management of harvest, based on sound and accepted tenets of habitat and population management, is the objective of the amendment as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that indiscriminate killing would not help the javelina population. The department agrees with the comment and responds that the amendment as adopted will not allow indiscriminate harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the managed lands system just drives the costs upward. The department disagrees with the comment and responds that better management has a number of results. While it is true that a higher quality of hunting experience could be more marketable, it also true that more numerous wildlife present landowners with the opportunity for additional income. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the amendment would shrink hunting opportunity for the general public because landowners would be able to control javelina populations by themselves. The department disagrees with the comment and responds that the amendment is not intended for javelina control, but javelina management. It is up to the landowner to decide how best to meet their management goals. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's statement that javelina populations are experiencing a downward trend is contradicted by increasing quotas and bag limits. The commenter also stated that javelina would not be taken by biologically acceptable methods and that the amendment would allow the killing of all javelinas. The commenter also stated that Choke Canyon State Park does not report the harvest of javelina and that the department is trying to extinguish the javelina population there. The department disagrees with the comment and responds that under the amendment as adopted, properties with an approved management plan will be given an annual quota, based on harvest, population, and habitat information for that specific property. The department also responds that no provision of the amendment authorizes any means or methods other than those that are currently lawful, and that because harvest quotas are driven by sustainability and must be in order to avoid depletion of the resource, the amendment as adopted will not result in the mortality of the entire javelina population, locally or regionally. The department further notes that department records indicate that 16 javelinas have been taken on Choke Canyon State Park since 2001, and that javelina populations on the park are stable and within historic levels. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is reducing the game animal status of javelina and has no realistic idea as to either numbers of javelina in any region or javelina harvest. The commenter stated that the department also has no realistic idea of the range of javelinas in Texas, because reports of javelina populations in areas where they are not reported have been confirmed by eyewitness sightings and photos. The department disagrees with the comment and responds that the javelina's status as a game animal is determined by the legislature and cannot be rescinded by the department. The department also responds that although the department does not conduct discrete population surveys specifically for javelina, formal and informal indices (such as hunter surveys, locker plant checks, stem counts, landowner data) are used by department biologists to determine coarse-level estimates of the health of javelina populations, including evidence of range expansion and population increases. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many javelina in the state and they should be treated like feral hogs. The department disagrees with the comment and responds that the javelina is a game animal and by law (Parks and Wildlife Code, §61.055) the department must amend or revoke rules in order to avoid depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that instead of hunting javelina where they are abundant, excess populations should be relocated to other areas. The department disagrees with the comment and responds that javelina exhibit a unique social organization by family groups. Individuals that are trapped and relocated will not survive being separated from their family groups. Similarly, family groups that are disrupted by major perturbations such as the trapping of numerous individuals do not fare well. For theses reasons, trapping and relocation of javelinas is not appropriate or effective. No changes were made as a result of the comment.

The department received 62 comments supporting adoption of the proposed amendment.

The department received 17 comments opposing adoption of the proposed amendment that would eliminated the 'double tagging' requirement for antlerless mule deer taken under an Antlerless Mule Deer Permit. Of the 17 comments, two stated a rationale or explanation for opposition. Those comments, accompanied by the agency's response to each, are as follows.

One commenter opposed adoption and stated that the amendment would allow large land owners to harvest more deer than could be harvested by hunters under normal circumstances. The department disagrees with the comment and responds that the amendment as adopted will not authorize additional harvest beyond that currently allowed. The amendment would simply save hunters from having to attach multiple documents bearing the same information to a harvested deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the amendment was an attempt to limit the number of hunters while maintaining or increasing the deer harvest. The department disagrees with the comment and responds that the amendment as adopted will not authorize additional harvest beyond that currently allowed. The amendment would simply save hunters from having to attach multiple documents bearing the same information to a harvested deer. No changes were made as a result of the comment.

The department received 59 comments supporting adoption of the proposed amendment.

The department received 40 comments opposing adoption of the proposed amendment that would require taxidermists to retain records for two years from the time a specimen is claimed. Of the 40 comments, eight stated a rationale or explanation for opposition. Those comments, accompanied by the agency's response to each, are as follows.

Four commenters opposed adoption and stated that the amendment would cause more work for taxidermists, which would result in higher prices for the consumer. The department disagrees with the comment and responds that the amendment as adopted does not create or increase administrative costs for taxidermists, it simply creates a new timeline for the retention of records that are already required under current law. No changes were made as a result of the comment.

One commenter opposed adoption and stated that taxidermists should have to file monthly reports. The department disagrees with the comment and responds that the administrative costs to the department and to taxidermists of monthly reporting would be prohibitive. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the amendment is micromanagement and just another way for the state to make money. The department disagrees with the comment and responds that the only effect of the amendment as adopted is to create a new timeline for the retention of records that are already required under current law. The department also notes that there are no fees or charges imposed by the department upon taxidermists. No changes were made as a result of the comment.

One commenter opposed adoption and stated that in return for a minimal benefit for law enforcement, taxidermists would be burdened with more paperwork and longer record retention requirements. The department disagrees with the comment and responds that the amendment as adopted does not create or increase administrative costs for taxidermists and it does not lengthen the record retention requirements. No changes were made as a result of the comment.

One commenter opposed adoption and stated that more paperwork is unnecessary. The department agrees with the comment and responds that the amendment as adopted does not create or increase administrative costs for taxidermists. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the amendment is a waste of time for all concerned because the state should be able to prove the legality of take within two years, taxidermists do not need additional extensive paperwork, and it makes just one more thing a hunter has to fill out. The department disagrees with the comment and responds that under current rule, an unscrupulous person, upon being asked to provide documentation accompanying a specimen, could claim that the taxidermy had been completed more than two years previously and therefore the required documentation had been discarded. As adopted the amendment would require the taxidermist to retain records not from the completion of taxidermy, but from the time the customer claims the specimen. The department also responds that the amendment as adopted does not create or increase administrative costs for taxidermists and does not impose any additional documentation requirements on hunters.

The department received 71 comments supporting adoption of the proposed amendment.

The department received 23 comments opposing adoption of the proposed amendment that would extend for one year the provision allowing the take of catfish by lawful archery equipment. Of the 23 comments, nine stated a rationale or explanation for opposition. Those comments, accompanied by the agency's response to each, are as follows.

Four commenters opposed adoption and stated that there were enough rough fish for bowfishermen and no need to take game fish. The department disagrees with the comment and responds that there is no statutory provision that restricts archers to nongame fish, and since overall angler effort with respect to archery equipment does not appear to exert a significant additive impact on total harvest, there is no danger of depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that catfish needed protection, that catch-and-release isn't possible for fish

taken by archery, that the amendment would lead to poaching, and that bowfishing is too easy. The department disagrees with the comment and responds that it is incumbent upon any person who goes fishing to understand and follow the regulations; since catfish are protected by bag and length limits, anglers will have to use judgment and care in deciding which fish to kill. The department also responds that there is no causal connection between the amendment and poaching, noting that poaching is a conscious decision to disregard the law. The department further notes that ease of use of a particular taking device is irrelevant, since catfish are protected by size and bag limits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is too difficult to determine the size and length of a fish when it is underwater. The department agrees with the comment but also notes that it is incumbent upon any person who goes fishing to understand and follow the regulations; since catfish are protected by bag and length limits, anglers will have to use judgment and care in deciding which fish to kill. No changes were made as a result of the comment.

One commenter opposed adoption and stated that catfish should not be treated like gar. The department disagrees with the comment and responds that catfish remain protected by size and bag limits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that wounding loss does not justify allowing the take of a valuable game fish. The department disagrees with the comment and responds that under Parks and Wildlife Code, §66.011, it is an offense to leave edible fish taken in the public waters of the state to die. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the majority of Texans who commented on this proposal when it was originally proposed were against the regulation then, but it was adopted as a personal agenda of one commissioner. The commenter also stated that the regulation has no merit and should be discontinued. The department disagrees with the comment and responds that the biological impact of the amendment upon catfish populations is believed to be minimal, based on the low numbers of people using crossbows to take catfish. Public comment is used by the commission to gauge the attitude of user groups and concerned parties as part of the overall deliberative process. However, consistency with statute and policy sometimes conflict with popular opinion. The amendment is consistent with the commission's policy to provide the greatest opportunity possible for the public to participate in angling. The department has determined that in allowing crossbows for the take of catfish, the danger of waste or depletion of the resource is negligible. Therefore, the department believes that the rule is justifiable. No changes were made as a result of the comment.

The department received 189 comments supporting adoption of the proposed amendment.

The Texas BASS Angler Federation opposed adoption of the proposed amendment.

The department received 15 comments opposing adoption of the amendment that would alter the possession limit for striped bass on Lake Texoma. Of the 15 comments, four stated a rationale or explanation for opposition. Those comments, accompanied by the agency's response to each, are as follows.

Two commenters opposed adoption and stated that the entire lake should have a single regulation. The department agrees with the comment but responds that the commission does not have the authority to unilaterally impose regulations on Lake Texoma, which is a shared water body with Oklahoma. No changes were made as a result of the comment.

One commenter opposed adoption and stated that 10 striped bass is a sufficient bag limit. The department disagrees with the comment and responds that 20-fish limit is not believed to be a threat to striped bass populations and is partially consistent with Oklahoma regulations currently in effect. No changes were made as a result of the comment.

The department received 91 comments supporting adoption of the proposed amendment.

The department received 3,667 comments concerning adoption of the amendments to §65.72 that affected coastal fisheries resources. Of the 3,667 comments 1,205 opposed all or part of the proposals.

The department received eight comments opposing adoption of the portion of the amendment affecting red snapper rules. Two commenters provided a specific reason or rationale for opposing adoption. Those comments, accompanied by the agency's response follow.

One commenter opposed adoption and stated that the minimum size limit should be eliminated and that fishermen should be allowed to keep the first four fish they catch. The agency disagrees with the comment and responds that the purpose of a minimum size limit is to protect young fish to age at first spawn or to maximize yield per recruit. Although the department recognizes that hooking mortality does occur, studies have proven that the return of undersize fish to the water will result in the survival of some percentage of those fish. In addition, current modeling of this type of change in regulation indicates that due to larger catches of smaller fish under this scenario and uncertainty caused by angler behavior there does not appear to be biological benefits associated with the proposed change to 13 inches. The department also notes that there is no way for law enforcement personnel to determine that any four fish were the first four fish caught by an angler, and that a "first fish" rule would allow anglers to replace previously caught fish with larger fish. No changes were made as a result of the comment.

One commenter opposed adoption of the amendment and stated that it should not apply to anglers on head boats. The agency disagrees with the comment for the same reasons stated in the comment above and because the agent of take is immaterial, be it a commercial or recreational angler or various fishing types or platforms used by either of these fishing sectors. No changes were made as a result of the comment.

The department received 34 comments supporting adoption of the portion of the proposed amendment affecting red snapper.

The department received 12 comments opposing adoption of the portion of the proposed amendment that would have implemented a catch-and-release fishery for tarpon. All 12 commenters stated a preference for retaining bag and minimum size limits rather than a catch-and-release fishery. The agency agrees with the comments and responds that while other states and fishing organizations have successfully adopted catch-and-release rules for tarpon, Texas Parks and Wildlife Department believes that setting a minimum size limit that corresponds to the current state record adequately protects the tarpon population at this time. Therefore, the rule as adopted

retains the current daily bag limit of one tarpon, but imposes an 85-inch minimum length limit in place of the current 80-inch limit.

The department received four comments opposing adoption of the proposed amendment to §65.72 that created new definitions for "charter vessel" and "head boat." Of the four comments, one stated a rationale or explanation for opposition. That comment, accompanied by the agency's response, follows.

One commenter opposed adoption of the proposed definition of "charter boat" and stated that the captain of a charter vessel should be allowed to carry as many passengers as desired. The agency disagrees with the comment and responds that a boat captain may carry as many passengers as safety permits, but carrying more than six passengers requires a different United States Coast Guard operator's license and requires the vessel to meet additional requirements under federal regulation. It is precisely this difference that is addressed by the proposed amendment. No changes were made as a result of the comment.

The department received 21 comments supporting the adoption of the portion of the proposed amendment affecting the definitions of charter boat and head boat.

The department received 1,137 comments opposing adoption of the portion of the proposed amendment that affects spotted seatrout rules.

The department received 1,112 comments opposing the restriction of lower bag limits for spotted seatrout to the Lower Laguna Madre (LLM). The commenters stated that the bag limit reduction should apply to all coastal waters. The agency disagrees with the comments and responds that the rules were proposed specifically for the LLM because that is the only portion of Texas waters where spawning, fry, and fingerlings are adequate, yet age cohorts are not entering the breeding population in sufficient numbers to prevent a decline in spawning stock biomass. The proposed five fish per day bag and possession limits were specifically designed to address the population problem in the LLM; thus, it would be inappropriate to impose those limitations in waters where the problem does not occur. No changes were made as a result of the comment.

The department received 707 comments opposing the reduction of spotted seatrout bag limits for the LLM. The commenters stated that the population problems in the LLM are being caused by poor water quality resulting from siltation of the Port Mansfield channel, and that these deficiencies should be addressed before applying limits to anglers. The agency disagrees with the comment and responds that the decline in spawning stock biomass began in 1988. The Port Mansfield channel was subjected to dredging every two years, ending in 1999. During this 11-year period, spawning stock biomass decline continued unabated and the trend in this population parameter did not change with the disruption in the dredging schedule. Also, the Port Mansfield channel is but one of the channels through which water is exchanged with other water bodies (e.g., Gulf of Mexico and the Upper Laguna Madre), and while the jetties are difficult to navigate in a vessel, water and fish continue to use the pass, as well as the north cut leading to the Upper Laguna Madre and the Brazos Santiago Pass between South Padre Island and Brazos Island leading to the Gulf of Mexico. If the siltation of the Port Mansfield channel produced declines in water quality sufficient to impact spotted seatrout populations, it clearly would have been reflected in the populations of other fish species in that bay. Populations of Atlantic croaker and white and striped mullet demonstrate opposite trends from those of spotted seatrout. Also, the department is unaware of any environmental problem other than fishing pressure that affects only larger spotted seatrout, while not affecting younger and smaller fish. Also, the department has no regulatory authority over channel dredging. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the current slot limit of 15-25 inches should be changed to 14-24 inches for all waters. The agency disagrees with the comment and responds that various permutations of bag and size limits were investigated, but the bag limit reduction was chosen because it appeared to provide greater benefits (impacts) to the spawning stock biomass and was most likely to lead to a timely recovery of the stock to historical levels.

One commenter opposed adoption of the portion of the amendment that made the possession limit and the daily bag limit identical. The agency disagrees with the comment and responds that the purpose of making the possession limit and the bag limit the same is to reduce harvest pressure on the population. With the traditional possession limit of twice the daily bag limit, an unscrupulous angler could claim to have been on the water for two days when in fact they had not, making enforcement of the five-fish limit in the LLM more difficult. No changes were made as a result of the comment.

One commenter opposed adoption and stated that instead of reducing bag or possession limits, the department should increase law enforcement activity in the LLM and use equipment seizure as an enforcement tool. The agency disagrees with the comment and responds that the documented downward trends in spawning biomass of the spotted seatrout population in the LLM are demonstrably the result of intensive recreational fishing effort and not illegal fishing activity. The department maintains an active law enforcement presence in the LLM and believes that any declines are the cumulative results of all fishing mortalities. The department believes that the fishery cannot withstand the increased level of fishing mortality under the current bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department used inadequate and flawed scientific data to evaluate the LLM spotted seatrout fishery. The agency disagrees with the comment and responds that department datasets were developed from 2,926 angler survey days (during which 32,930 anglers were interviewed); 4,628 individual bag seine surveys; 2,640 individual trawl samples; and 1,980 gill net surveys. The surveys are based on a random sampling program begun in the mid-1970s and which has been continually reviewed and reevaluated since that time. Additionally, sampling protocols are audited on an annual basis to insure quality control of sampling. Further, the department's sampling protocols and analytical methodologies were reviewed by the Texas Academy of Sciences and the American Fisheries Society from 2002-2004. The reviews were not only favorable, but suggested that this sampling protocol could serve as a model for other states. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposal was flawed because it was based on hypothetical models designed to project the potential results of the amendment. The commenter also stated that, similar to hypothetical models that predicted reductions in harvest that could result from removing fishing guide limits (which the commenter stated resulted in no change at all), the proposed amendment would produce little in the way of positive results in the spotted seatrout population. The agency disagrees with the comment and responds that the data

illustrating the effects of increasing the rate of removal of larger fish is based on the long-term fishery dependent (gill net) sampling. The decline is not a result of the model, but a reflection of the actual downward trend in fisheries-independent data for larger size classes. The agency further responds that while the commenter was accurate in stating that hypothetical modeling was used to predict the impact of removing fishing guide limits on harvest, the results of that change did not, as was alleged, result in no change. Based on creel samples, the result of the rule change was a reduction of fish-per-boat averages for guided trips. No changes were made as a result of the comment.

The Recreational Fishing Alliance, Lower Laguna Madre Foundation, South Padre Island Chamber of Commerce, Coastal Bend Bays and Estuaries Program, Inc., and the Coastal Bend Bays Foundation commented in support of adoption of the proposed amendment that implements regional regulations for spotted seatrout.

The Port Mansfield Chamber of Commerce, Coastal Bend Guides Association, and Horizon Outfitters, commented against adoption of the proposed amendment that implements regional regulations for spotted seatrout.

The Coastal Conservation Association commented in support of adoption of all proposed regulations affecting saltwater angling.

The Texas Wildlife Association commented in support of adoption of the proposed amendments.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.9, 65.10, 65.25, 65.34

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §42.017, which authorizes the commission to modify or eliminate the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in Chapter 42; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Agent--A person authorized by a landowner to act on behalf of the landowner. For the purposes of this chapter, the use of the term "landowner" also includes the landowner's agent.

(2) Alligator gig--A pole or staff equipped with at least one of the following:

(A) immovable prongs;

(B) two or more spring-loaded grasping arms; or

(C) a detachable head.

(3) Alligator hide tag (hide tag)--A department-issued tag required by federal law pursuant to the Convention on International Trade in Endangered Species (CITES) to be affixed to all alligators taken in the state. All alligator hide tags issued by the department are CITES tags.

(4) Annual bag limit--The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

(5) Antlerless deer--A deer having no hardened antler protruding through the skin.

(6) Antler point--A projection that extends at least one inch from the edge of a main beam or another tine. The tip of a main beam is also a point.

(7) Artificial lure--Any lure (including flies) with hook or hooks attached that is man-made and is used as a bait while fishing.

(8) Bait--Something used to lure any wildlife resource.

(9) Baited area--Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over that area.

(10) Bearded hen--A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

(11) Buck deer--A deer having a hardened antler protruding through the skin.

(12) Cast net--A net which can be hand-thrown over an area.

(13) Charter Vessel--A vessel less than 100 gross tons that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more then three persons aboard, including operator and crew.

(14) Circle hook--A hook originally designed and manufactured so that the point of the hook is turned perpendicularly back toward the shank of the hook to form a generally circular or oval shape.

(15) Coastal waters boundary--All public waters east and south of the following boundary are considered saltwater: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of the Aransas River south of Woodsboro, thence eastward along the south shore of the Aransas River to the junction of the Aransas River Road at the Bonnie View boat ramp; thence northward along the Aransas River Road to the junction of F.M. Road 629; thence northward along F.M. Road 629 to the junction of F.M. Road 136; thence eastward along F.M. Road 136 to the junction of F.M. Road 2678; then northward along F.M. Road 2678 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of

State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence southward along State Highway 36 to the junction of F.M. Road 2004, thence northward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The waters of Spindletop Bayou inland from the concrete dam at Russels Landing on Spindletop Bayou in Jefferson County; public waters north of the dam on Lake Anahuac in Chambers County; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; Lakeview City Park Lake, West Guth Park Pond, and Waldron Park Pond in Nueces County; Galveston County Reservoir and Galveston State Park ponds #1-7 in Galveston County; Lake Burke-Crenshaw and Lake Nassau in Harris County; Fort Brown Resaca, Resaca de la Guerra, Resaca de la Palma, Resaca de los Cuates, Resaca de los Fresnos, Resaca Rancho Viejo, and Town Resaca in Cameron County; and Little Chocolate Bayou Park Ponds #1 and #2 in Calhoun County are not considered coastal waters for purposes of this subchapter.

(16) Community fishing lake--All public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park.

(17) Crab line--A baited line with no hook attached.

(18) Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(19) Day--A 24-hour period of time that begins at midnight and ends at midnight.

(20) Deer population data--Results derived from deer population surveys and/or from systematic data analysis of density or herd health indicators, such as browse surveys or other scientifically acceptable data, that function as direct or indirect indicators of population density.

(21) Dip net--A mesh bag suspended from a frame attached to a handle.

(22) Final processing--The cleaning of a dead wildlife resource for cooking or storage purposes. For a deer or antelope carcass, the term includes the processing of the animal more than by quartering.

(23) Fish--

(A) Game fish--Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, tripletail, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish--All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

(24) Fishing--Taking or attempting to take aquatic animal life by any means.

(25) Fish length--That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

(26) Fish species names--The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes from The United States, Canada and Mexico."

(27) Fishing guide--A person who, for compensation, accompanies, assists, or transports a person or persons engaged in fishing in the water of this state.

(28) Fishing guide deck hand--A person in the employ of a fishing guide who assists in operating a boat for compensation to accompany or to transport a person or persons engaged in fishing in the water of this state.

(29) Folding panel trap--A metallic or non-metallic mesh trap, the side panels hinged to fold flat when not in use, and suspended in the water by multiple lines.

(30) Fully automatic firearm--Any firearm that is capable of firing more than one cartridge in succession by a single function of the trigger.

(31) Gaff--Any hand-held pole with a hook attached directly to the pole.

(32) Gear tag--A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, contain the name and address of the person using the device, and, except for saltwater trotlines and crab traps, the date the device was set out.

(33) Gig--Any hand-held shaft with single or multiple points.

(34) Headboat--A vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. A headboat with a commercial vessel permit is considered to be operating as a headboat when it carries a passenger who pays a fee or, in the case of persons aboard fishing for or possessing coastal migratory fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

(35) Inside waters--All bays, inlets, outlets, passes, rivers, streams, and other bodies of water landward from the shoreline of the state along the Gulf of Mexico and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls.

(36) Jug line--A fishing line with five or less hooks tied to a free-floating device.

(37) Lawful archery equipment--Longbow, recurved bow, and compound bow.

(38) License year--The period of time for which an annual hunting or fishing license is valid.

(39) Muzzleloader--Any firearm that is loaded only through the muzzle.

(40) Natural bait--A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural

state, provided that none of these may be altered beyond cutting into portions.

(41) Permanent residence--One's principal or ordinary home or dwelling place. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(42) Pole and line--A line with hook, attached to a pole. This gear includes rod and reel.

(43) Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(44) Purse seine (net)--A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

(45) Sail line--A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

(46) Sand Pump--A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp (Callichirus islagrande, formerly Callianassa islagrande) from their burrows.

(47) Seine--A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

(48) Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(49) Spear--Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not; include arrows.

(50) Spear gun--Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

(51) Spike-buck deer--A buck deer with no antler having more than one point.

(52) Throwline--A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

(53) Trap--A rigid device of various designs and dimensions used to entrap aquatic life.

(54) Trawl--A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

(55) Trotline--A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

(56) Umbrella net--A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

(57) Unbranched antler--An antler having no more than one antler point.

(58) Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(59) Wildlife resources--Alligators, all game animals, all game birds, and aquatic animal life.

(60) Wounded deer--A deer leaving a blood trail.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702727
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Effective date: July 18, 2007
Proposal publication date: March 2, 2007
For further information, please call: (512) 389-4775

DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §§65.42, 65.44, 65.64

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §42.017, which authorizes the commission to modify or eliminate the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in Chapter 42; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

§65.64. Turkey.

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four, no more than one of which may be an Eastern turkey.

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) In Aransas, Atascosa, Bee, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kinney (south of U.S. Highway 90), LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Brooks, Kenedy, Kleberg, and Willacy counties, there is a fall general open season.

(i) Open season: first Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(C) In Archer, Armstrong, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lampasas, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Wise, Val Verde (that portion located north of U.S. Highway 90; and that portion located both south of U.S. Highway 90 and west of Spur 239), and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) In Archer, Armstrong, Baylor, Bell, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Kent, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Potter, Randall, Reagan, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Throckmorton, Tom Green, Travis, Upton, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring general open season.

(i) Open season: Saturday closest to April 1 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(B) In Aransas, Atascosa, Bandera, Bee, Bexar, Blanco, Brewster, Brooks, Calhoun, Cameron, Comal, Crockett, DeWitt, Dimmit, Duval, Edwards, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hidalgo, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Pecos, Real, Refugio, San Patricio, Starr, Sutton, Terrell, Uvalde, Val Verde, Victoria, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is a spring general open season.

(i) Open season: Saturday closest to March 18 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(C) In Bastrop, Caldwell, Colorado, Fayette, Jackson, Lavaca, Lee, and Milam counties, there is a spring general open season.

(i) Open season: from April 1 through April 30.

(ii) Bag limit: one turkey, gobblers only.

(4) Special Youth-Only Seasons. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season: the weekend (Saturday and Sunday) immediately preceding the first Saturday in November, and the third weekend (Saturday and Sunday) in January.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) There shall be special youth-only spring general open hunting seasons for Rio Grande turkey in the counties listed in paragraph (3)(A) of this section.

(i) open seasons: the weekend (Saturday and Sunday) immediately preceding the first day of the general open spring season and the weekend (Saturday and Sunday) immediately following the close of the general open spring season.

(ii) bag limit: as specified for individual counties in paragraph (3)(A)(ii) of this subsection.

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Brazoria, Camp, Cass, Cherokee, Delta, Fannin, Fort Bend, Franklin, Grayson, Gregg, Hardin, Harrison, Hopkins, Houston, Hunt, Jasper, Lamar, Liberty, Marion, Matagorda, Montgomery, Morris, Nacogdoches, Newton, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Walker, Wharton, and Wood counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: from April 1 for 30 consecutive days.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered at designated check stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsection (b) or (c) of this section, the season is closed for hunting turkey.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702728
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General Counsel
Texas Parks and Wildlife Department
Effective date: July 18, 2007
Proposal publication date: March 2, 2007
For further information, please call: (512) 389-4775

DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.72, §65.82

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §42.017, which authorizes the commission to modify or eliminate the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in Chapter 42; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

§65.72. Fish.

(a) General rules.

(1) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(2) Game fish may be taken only by pole and line, except as provided in this subchapter.

(3) The bag and possession limits of this subchapter do not apply to the possession or landing of fish lawfully raised under an offshore aquaculture permit issued under Chapter 57, Subchapter C of this title (relating to Introduction of Fish, Shellfish, and Aquatic Plants).

(4) It is unlawful:

(A) to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under this subchapter;

(B) while fishing on or in public waters to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(C) to land by boat or person any fish within a protected length limit, or in excess of the daily bag limit or possession limit established for those fish;

(D) to use game fish or any part thereof as bait, except for processed catfish heads used as crab-trap bait by a licensed crab fisherman, provided the catfish is obtained from an aquaculture facility permitted to operate in the United States. A person who uses catfish as bait under this subparagraph shall, upon the request of a department employee acting within the scope of official duties, furnish appropriate authenticating documentation, such as a bill of sale or receipt, to prove that the catfish was obtained from a legal source.

(E) to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person finally lands the catch on the mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat;

(F) to use any vessel to harass fish; or

(G) to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish.

(5) Finfish tags: Prohibited Acts.

(A) No person may purchase or use more finfish (red drum) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006.

(B) It is unlawful to:

(i) use the same finfish tag for the purpose of tagging more than one finfish;

(ii) use a finfish tag in the name of another person;

(iii) use a tag on a finfish for which another tag is specifically required;

(iv) catch and retain a finfish required to be tagged and fail to immediately attach and secure a tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or salt water stamp holder;

(vi) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or salt water stamp holder;

(vii) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder; or

(viii) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same holder.

(6) Commercial fishing seasons.

(A) The commercial seasons for finfish species listed in this paragraph and caught in Texas waters shall run concurrently with commercial seasons established for the same species caught in federal waters of the Exclusive Economic Zone (EEZ).

(B) The commercial fishing season in the EEZ will be set by the National Marine Fisheries Service for:

(i) red snapper under guidelines established by the Fishery Management Plan for Reef Fish Resources for the Gulf of Mex-

ico. No person may land red snapper in Texas for commercial purposes unless that person is in compliance with the provisions of this clause.

(I) Requirement for Individual Fishing Quota (IFQ) vessel endorsement and allocation. No person aboard any vessel shall sell, barter, trade, or exchange red snapper; land or attempt to land red snapper for the purpose of sale, barter, trade, or exchange; or possess red snapper for the purpose of sale, barter, trade, or exchange unless the person possesses a valid federal permit for the harvest of Gulf of Mexico Reef Fish and a valid federal red snapper Individual Fishing Quota (IFQ) vessel endorsement.

(-a-) No person shall harvest or land red snapper for the purpose of sale, barter, trade, or exchange, without holding or being assigned federal IFQ allocation at least equal to the pounds of red snapper landed/docked at a shore side location.

(-b-) At-sea or dockside transfer of red snapper from one vessel to another vessel for the purpose of sale, barter, trade, or exchange, is prohibited.

(-c-) Except as provided in this subparagraph, no person shall purchase, sell, exchange, barter, or attempt to purchase, sell, exchange, or barter any red snapper in excess of any possession limit for which federal commercial license, permit, and appropriate allocation were issued.

(-d-) On the last fishing trip of the year, a vessel may exceed by 10% the remaining IFQ allocation.

(II) Offloading and transfer. During the hours from 6:00 p.m. until 6:00 a.m. (local time), no person shall offload from a vessel or receive from a vessel red snapper harvested for the purpose of sale, barter, trade, or exchange. No person who is in charge of a commercial red snapper fishing vessel shall offload red snapper from the vessel prior to three hours after proper notification is made to National Oceanographic and Atmospheric Administration (NOAA) Fisheries.

(III) Recreational limits. Persons aboard a vessel for which permits indicate both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may retain reef fish under the recreational take and possession limits specified in subsection (b) of this section, provided the vessel is operating as a validly licensed charter vessel or headboat with prepaid recreational charter fishermen aboard the vessel.

(IV) VMS requirement. No person shall harvest red snapper for the purpose of sale, barter, trade or exchange, from a vessel unless that vessel is equipped with a fully operational and federally approved Vessel Monitoring System (VMS) device. Approved devices are those devices approved by NOAA Fisheries and operating under the requirements mandated by NOAA Fisheries.

(V) Requirement for IFQ dealer endorsement. In addition to the requirement for a federal dealer permit for Gulf reef fish, a dealer must have a federal Gulf red snapper IFQ dealer endorsement in order to receive Gulf red snapper from a commercial fishing vessel. A person aboard a vessel with a federal Gulf red snapper IFQ vessel endorsement must also have a federal Gulf red snapper IFQ dealer endorsement to sell to anyone other than a permitted dealer.

(VI) Requirement for transaction approval code. The owner or operator of a vessel landing red snapper for the purpose of sale, barter, trade, or exchange is responsible for calling National Marine Fisheries Service (NMFS) Office of Law Enforcement at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the required NMFS landing transaction report and, thus, will preclude issuance of the required NMFS-issued transaction approval code. Possession of red snapper for the purpose of sale, barter, trade, or exchange, from the time of transfer from a vessel through possession by a dealer is prohibited unless the red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of red snapper in possession.

(VII) Wholesale dealers. Wholesale dealers are required to comply with the provisions of Parks and Wildlife Code, §66.019, when acquiring, purchasing, possessing, and selling red snapper. Wholesale dealers shall maintain approval codes issued by NOAA Fisheries associated with all transactions of red snapper on purchases and sales on records.

(VIII) Recreational limit. All persons aboard a vessel for which no commercial vessel permit for Gulf reef fish has been issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit specified in subsection (b) of this section for red snapper, and such fish may not be bartered or sold.

(ii) king mackerel under guidelines established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; and

(iii) sharks (all species, their hybrids and subspecies) under guidelines established by the Fishery Management Plan for Highly Migratory Species.

(C) When federal and/or state waters are closed, it will be unlawful to:

(i) purchase, barter, trade or sell finfish species listed in this paragraph landed in this state;

(ii) transfer at sea finfish species listed in this paragraph caught or possessed in the waters of this state; and

(iii) possess finfish species listed in this paragraph in excess of the current recreational bag or possession limit in or on the waters of this state.

(7) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Kinney, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (Atherinidae family).

(b) Bag, possession, and length limits.

(1) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Possession limits are twice the daily bag limit on game and non-game fish except as provided in these rules.

(B) For flounder, the possession limit is the daily bag limit.

(C) Except as provided in subparagraph (D) of this paragraph, the statewide daily bag and length limits shall be as follows. Figure: 31 TAC §65.72(b)(2)(C)

(D) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) Freshwater species.
Figure: 31 TAC §65.72(b)(2)(D)(i)

(ii) Saltwater species.
Figure: 31 TAC §65.72(b)(2)(D)(ii)

(iii) Bag and possession limits for black drum and sheepshead do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(iv) Fish caught in federal waters in compliance with a federal fishery management plan may be landed in Texas.

(v) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(c) Devices, means and methods.

(1) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(2) Game and non-game fish may be taken by pole and line only in:

(A) community fishing lakes;

(B) sections of rivers lying totally within the boundaries of state parks;

(C) Lake Pflugerville (Travis County);

(D) the North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam; and

(E) the South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(3) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subsection.

(4) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(5) Device restrictions.

(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(i) Only non-game fish may be taken with a cast net.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(B) Dip net.

(i) It is unlawful to use a dip net except:

(I) to aid in the landing of fish caught on other legal devices; and

(II) to take non-game fish.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(C) Gaff.

(i) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(ii) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(D) Gig. Only non-game fish may be taken with a gig.

(E) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the permit to sell non-game fish taken from freshwater, if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device;

(iv) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(F) Lawful archery equipment. Only non-game fish, channel catfish, blue catfish, and flathead catfish may be taken with lawful archery equipment or crossbow. After August 31, 2008, only nongame fish may be taken by means of lawful archery or crossbow.

(G) Minnow trap (fresh water and salt water).

(i) Only non-game fish may be taken with a minnow trap.

(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(H) Perch traps. For use in salt water only.

(i) Perch traps may be used only for taking non-game fish.

(ii) It is unlawful to fish a perch trap that:

(I) exceeds 18 cubic feet in volume;

(II) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(-a-) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand # 530) or sisal twine (comparable to Lehigh brand # 390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(-b-) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(-c-) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-1-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand # 530) or sisal twine (comparable to Lehigh brand # 390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-2-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-3-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand # 530), sisal twine (comparable to Lehigh brand # 390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(III) that is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 30 days after date set out.

(I) Pole and line.

(i) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(ii) Game and nongame fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take nongame fish.

(iii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(J) Purse seine (net).

(i) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore, and only during the period of time beginning the third Monday in April through the first day in November each year.

(ii) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(iii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(K) Sail line. For use in salt water only.

(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(ii) Line length shall not exceed 1,800 feet from the reel to the sail.

(iii) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(iv) No float on the line may be more than 200 feet from the sail.

(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(vii) There is no hook spacing requirement for sail lines.

(viii) No more than one sail line may be used per fisherman.

(ix) Sail lines may not be used by the holder of a commercial fishing license.

(x) Sail lines must be attended at all times the line is fishing.

(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(L) Seine.

(i) Only non-game fish may be taken with a seine.

(ii) It is unlawful to use a seine:

(I) which is not manually operated.

(II) with mesh exceeding 1/2-inch square.

(III) that exceeds 20 feet in length.

(iii) In salt water, non-game fish may be taken by seine for bait purposes only.

(M) Shad trawl. For use in fresh water only.

(i) Only non-game fish may be taken with a shad trawl.

(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(N) Spear. Only non-game fish may be taken with a spear.

(O) Spear gun. Only non-game fish may be taken with spear gun.

(P) Throwline. For use in fresh water only.

(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(Q) Trotline.

(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(ii) It is unlawful to use a trotline:

(I) with a mainline length exceeding 600 feet;

(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(III) with hook interval less than three horizontal feet;

(IV) with metallic stakes; or

(V) with the main fishing line and attached hooks and stagings above the water's surface.

(iii) In fresh water, it is unlawful to use a trotline:

(I) with more than 50 hooks;

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, and Tankersley Reservoir in Titus County.

(iv) In salt water:

(I) it is unlawful to use a trotline:

(-a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(-b-) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(-c-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(-d-) baited with other than natural bait, except sail lines;

(-e-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(-f-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1:00 p.m. on Friday through 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.

(III) It is unlawful to fish for commercial purposes with:

(-a-) more than 20 trotlines at one time;

(-b-) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;

(-c-) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;

(-d-) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(IV) It is unlawful to fish for non-commercial purposes with:

(-a-) more than 1 trotline at any time; or

(-b-) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(R) Umbrella net.

(i) Only non-game fish may be taken with an umbrella net.

(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

§65.82. Other Aquatic Life.

(a) It is unlawful for a person to knowingly take, kill, or disturb sea turtles or sea turtle eggs in or from the waters of the State of Texas.

(b) It is unlawful for a person to knowingly take or possess a diamondback terrapin (Malaclemys terrapin) or their eggs unless the person is authorized to do so under a permit issued under Chapter 69, Subchapter J of this title (relating to Scientific, Educational, and Zoological Permits).

(c) There is no open season on porpoises, dolphins (mammals), whales, or sawfishes (Pristis perotteti).

(d) It is unlawful for any person to take or kill shell-bearing mollusks, hermit crabs, starfish, or sea urchins from November 1 through April 30 within the following boundary: the bay and pass sides of South Padre Island from the East end of the north jetty at Brazos Santiago Pass to the West end of West Marisol drive in the town of South Padre Island, out 1,000 yards from the mean high-tide line, and bounded to the south by the centerline of the Brazos Santiago Pass.

(e) It is unlawful for any person to take, kill, or possess more than 15 univalve snails (all species), to include no more than two of each of the following species: lightening whelk, horse conch, Florida fighting conch, pear whelk, banded tulip, and Florida rocksnail.

(f) Any other aquatic life (except threatened and endangered species) not addressed in this subchapter may be taken only by hand or with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times as provided by proclamations of the Parks and Wildlife Commission and the Parks and Wildlife Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702729
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: July 18, 2007
Proposal publication date: March 2, 2007
For further information, please call: (512) 389-4775

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SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION
DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.83

The Texas Parks and Wildlife Commission adopts new §65.83, concerning Delegation of Authority, without changes to the proposed text as published in the April 20, 2007, issue of the *Texas Register* (32 TexReg 2252).

Federal authorities are responsible for regulating the take of all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. §§1801 et seq.) in the Exclusive Economic Zone (EEZ). The EEZ extends from the seaward boundary of state waters (nine nautical miles) out to 200 nautical miles. When rules are changed in the EEZ, Texas often changes the rules governing the take of those same species in state waters to create consistency between federal and state regulations, to enhance enforcement of the rules (i.e., state and federal), and to minimize public confusion over what may be legally landed in Texas from the Gulf of Mexico.

Parks and Wildlife Code, §79.002, authorizes the Texas Parks and Wildlife Commission (the Commission) to delegate to the executive director its responsibility and authority to make rules as necessary to modify state coastal fisheries regulations in order to provide for consistency with federal regulations in the exclusive economic zone. The new rule makes that delegation.

The new rule allows Texas regulations governing coastal fishing to be brought into conformity with federal regulations more rapidly than through the normal internal rulemaking process used by the department. Normally, the commission meets no more than five times per year, and amends the coastal fisheries portion of the Statewide Hunting and Fishing Proclamation once per year. This normal process of amending coastal fisheries rules takes 60 days or longer. Given the normal scheduling of commission meetings this can take as long as 120 days. Delegating rulemaking authority to the executive director allows Texas rules to be brought into conformity with federal rules within 60 days of adoption of the federal rule, or less time if necessary. Shortening the time period during which federal and Texas rules are inconsistent is expected to enhance species conservation, minimize confusion within the fishing community, and improve enforcement.

The new rule will function by providing the department with an expedited method for conforming state regulations whenever federal regulations change in the Exclusive Economic Zone.

The department received four comments opposing adoption of the proposed rule. Three of the commenters expressed a rationale or justification for opposition. Those comments, accompanied by the department's response, are as follows.

One commenter opposed adoption and stated that Texas rulemaking should be kept in the hands of Texans because the National Marine Fisheries Service has destroyed the recreational fishery and the tourist economy of South Texas and has handed the fishery to criminals. The commenter further stated that bringing state rules into agreement with federal rules would cause further damage. The department disagrees with the comment and responds that no rulemaking authority is being ceded to federal agencies and that rule changes in Texas waters will always be based on science and sensible judgment of what is in the best interests of the resource and those who enjoy the resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the commission should have to go out for public comment unless an emergency exists and that losing the ability to have hearings is not in the best interests of sportsmen. The department disagrees with the comment and responds that the rule as adopted does not create any exceptions to current requirements of statute, rule, or policy with respect to rulemaking or public notice. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the difference between the 60-day and 75-day standards would harm the shrimp industry. The department disagrees with the comment and responds that the rule as adopted has no effect on shrimp regulations or shrimping. No changes were made as a result of the comment.

The department received nine comments supporting adoption of the new rule.

The Recreational Fishing Alliance and the Texas Shrimp Association commented against adoption of the proposed new rule.

The new section is adopted under Parks and Wildlife Code, §79.002, which provides the Commission the authority to delegate to the executive director its responsibility and authority for making rules as necessary to modify state coastal fisheries regulations in order to provide for consistency with federal regulations in the exclusive economic zone. Responsibility for adopting rules covering taking, attempting to take, possession, transportation, purchase, and sale of aquatic resources in the salt waters of Texas is set forth in Parks and Wildlife Code, Chapters 61, 66, 67, 68, 76, 77, and 78.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702723
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Texas Parks and Wildlife Department
Effective date: July 18, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 389-4775

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SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.107

The Texas Parks and Wildlife Commission adopts an amendment to §65.107, concerning Permit Application and Processing, without changes to the proposed text as published in the April 20, 2007, issue of the *Texas Register* (32 TexReg 2252).

Under current §65.107(a), an applicant may specify multiple trap and release sites on a single application for a Permit to Trap, Transport, and Transplant Game Animals and Game Birds (popularly referred to as "Triple T" permits). The department has determined that the current method of permit administration is not cost effective. In Fiscal Year 2006, the department issued 75 Triple T permits authorizing trapping activities at 63 sites and release activities at 163 sites. The department incurred costs of approximately $120,830 to process applications, perform site inspections, observe and enforce compliance, and prosecute violations of Triple T regulations; however, revenue from permit fees during the same time period was $13,500.

Under Parks and Wildlife Code, §43.061, the state may not incur any expense for the trapping, transporting, and transplanting of game animals and game birds under a Triple T permit. Therefore, the department must increase the fee in order to recoup the expense to the state. The department has published a notice of adoption of the actual fee increase elsewhere in this issue, although a discussion of the fee is included in this preamble as a courtesy.

In Fiscal Year 2006, the department issued 75 Triple T permits authorizing trapping activities at 63 sites and release activities at 163 sites. The department incurred costs of approximately $120,830 to process applications, perform site inspections, observe and enforce compliance, and prosecute violations of Triple T regulations; however, revenue from permit fees during the same time period was $13,500.

It is the policy of the Texas Parks and Wildlife Commission that the department recover the cost of administering permit programs that authorize the possession of live game animals. Additionally, under Parks and Wildlife Code, §43.061, the state may not incur any expense for the trapping, transporting, and transplanting of game animals and game birds under a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter E, which is the authorizing statute for the Triple T permit. The rule as adopted is necessary for the department to recoup the expenses of administering the Triple T permit program. The fee of $750 was derived by dividing the cost of program administration and enforcement by the number of release sites.

Current §65.107(b) provides that an applicant for a permit may request a review of an agency decision to deny or delay permit issuance. The review panel is composed of agency managers. The amendment adds the Deputy Director of Operations (or his or her designee) to the review panel and removes "the Regional Director with jurisdiction" and the "White-tailed Deer or Mule Deer program leader." The change is necessary to include senior management in any situation calling for a review and provide consistency with other review panels associated with deer permits.

The amendment will function by requiring applicants to pay a fee for each release site named on a single Triple T permit and by establishing the composition of the panel that reviews agency decisions to deny or delay permit issuance.

The department received no comments concerning adoption of the proposed rule, other than those comments related to the fee increase, which are addressed in another rulemaking published elsewhere in this issue.

The amendment is adopted under the authority of Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds and authorizes the commission to set fees for review of permit applications or other department actions necessary to implement the provisions of §43.601.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702724
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Effective date: July 18, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 389-4775

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SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §§65.131, 65.134 - 65.136

The Texas Parks and Wildlife Commission adopts amendments to §65.131 and §§65.134 - 65.136, concerning Deer Management Permits (DMP), without change to the proposed text as published in the April 20, 2007, issue of the *Texas Register* (32 TexReg 2254).

The amendment to §65.131, concerning Deer Management Permit (DMP), eliminates current subsection (d) and alters the composition of the review panel provided for by current subsection (e). Current subsection (d) provides that changes to an existing deer management plan are to be treated as a new application. The subsection is being eliminated because another facet of this rulemaking provides for a consistent application process and fee for new applications and renewals. Therefore, subsection (d) is no longer necessary. The department has published a notice of adoption of the actual fee increase elsewhere in this issue, although a discussion of the fee is included in this preamble as a courtesy.

The department has determined that it does not recover the cost of administering the DMP program under current fee amounts. Under current rule, the fee for the initial issuance of a DMP is $1,000 and the permit may be renewed annually. The current fee for a renewal is $600. Under Parks and Wildlife Code, §43.603, the commission may establish a fee for new or renewed DMPs, but the fee for a DMP may not exceed $1,000.

The department has determined that it does not recover the cost of administering the DMP program. In Fiscal Year 2006, the department issued 38 new DMPs and renewed 40 DMPs, in-

curring expenses of approximately $92,000 to process applications, perform site and facility inspections, observe and enforce compliance, and prosecute violations of DMP regulations; however, revenue from permit fees was $62,000. Data from FY 07 is incomplete, but 58 new DMPs have been issued and 46 have been renewed, an increase of 67%. It is logical to assume that administrative and enforcement costs have also increased and continue to be greater than revenue. In fact, FY 07 revenue of $85,000 is still below the expenses from the previous year, when there were 67% fewer permits.

Therefore, the department has determined that an increase in the renewal fee is necessary in order to recoup administrative and enforcement expenses to the greatest extent possible.

Current §65.131(e) provides that an applicant for a permit may request a review of an agency decision to deny or delay permit issuance. The review panel is composed of agency managers. The amendment adds the Deputy Director of Operations (or his or her designee) to the review panel and removes "the Regional Director with jurisdiction" and the "White-tailed Deer or Mule Deer program leader." The change is necessary to include senior management in any situation calling for a review and provide consistency with other review panels associated with deer permits.

The amendment to §65.134, concerning Facility Standards, clarifies that the maximum number of bucks and does that may be kept in a DMP pen does not include fawns born in the pen during the permit year. The provisions of current subsection (c) allow no more than one buck and 20 does to be kept in a pen between September 1 and January 31. Those dates were selected because other provisions of the subchapter prohibit the addition of deer between March 2 and January 31 and require that all deer in a DMP be released by August 31. In essence, the current regulation specifies the maximum number of deer that may be in a DMP pen during the time it is lawful to confine deer in a DMP pen. The amendment simplifies and clarifies the provisions of the subsection by stating declaratively that a DMP pen may contain no more than one buck and 20 does at any time, exclusive of fawns born in the pen during the permit year.

The amendment to §65.135, concerning Detention and Marking of Deer, lengthens the period of time when it is unlawful to trap deer from the wild under a DMP and eliminates the requirement that deer within a DMP be ear-tagged.

Under current §65.135(a), deer may not be trapped between March 2 and August 31. The amendment extends the prohibition to the period from December 15 to August 31. The intent of the rule is to prevent the trapping of pregnant does, since the purpose of the subchapter is to authorize the trapping of wild does for breeding purposes. Department data indicate that by December 15 there is a high probability that pregnant does will be trapped. The amendment is necessary to ensure that the intent and integrity of the program is maintained.

Under current §65.135(b), adult deer within a DMP facility must be ear-tagged. The department has determined that tagging is not necessary and has little value to the agency. Therefore, the provision is being eliminated. A DMP holder is not prohibited from marking deer that are legally detained under a permit. The amendment is necessary to simplify the rules.

The amendment to §65.136, concerning Release, reduces the minimum footage of fencing that must be removed during release operations, allows multiple openings of at least 10 feet, and shortens the time that containment features must be removed in order to effect release of DMP deer. The provisions of the current rule allow for the use of release techniques that would otherwise be prohibited, provided they are approved by the department on a case-by-case basis. Since the inception of the permit in 1998, the department has approved numerous exceptions to the provisions of the section. In reviewing the exceptions to the rule, the department has determined that more flexible standards can be safely implemented. The amendment also eliminates the provision for case-by-case approval of release techniques, as the department does not intend to approve any release techniques other than what is allowed by rule. The department has also determined that the current requirement that fences remain down for a period of 60 days may be safely shortened to 30 days. The amendment is necessary to allow for the liberation of deer after fawning season but with time to apply for a new permit in time to be ready for the trapping season, which begins September 1. The amendment also clarifies that the provisions mandating the removal of supplemental food and water apply in the DMP pens at the time deer are released. The current wording of the provision does not make that clear. The amendment also clarifies that deer must be released in the pasture where they were originally captured, except for deer that the department has authorized for release elsewhere under a permit to trap, transport, and transplant game animals and game birds. The department wishes to make it clear that deer may not be released into a small enclosure or trap but must be released back into the same pasture or acreage that the deer management plan specified for the capture of the deer.

The amendment to §65.131 will function by eliminating a time-consuming process in favor of consistent application process for new applications and renewals; and by including senior management on review panels.

The amendment to §65.134 will function by specifying the maximum number of deer that may be kept in a DMP pen; by lengthening the period of time when it is unlawful to trap deer from the wild under a DMP; and by eliminating the requirement that deer within a DMP be ear-tagged.

The amendment to §65.136 will function by reducing the minimum footage of fencing that must be removed during release operations and shortening the time that containment features must be removed in order to effect release of DMP deer; by clarifying when supplemental food and water within DMP pens must be removed; and by stipulating that deer may not be released into a small enclosure or trap but must be released back into the same pasture or acreage that the deer management plan specified for the capture of the deer.

The department received one comment opposing adoption of the provision that would shorten the minimum time that fencing components must remain down during release operations. The commenter stated that 30 days is insufficient for dispersal and does not allow for proper inspection or confirmation of openings by enforcement officials. The department disagrees with the comment and responds that dispersal must occur within several days, because all supplemental feed and water is removed, forcing the deer to begin natural feeding behaviors. The department also responds that its Law Enforcement Division believes that the rule as adopted can be enforced. No changes were made as a result of the comment.

The department received one comment supporting adoption of the portion of the rules that do not involve fee increases. Numerous comments opposing fee increases were received; they are

addressed in another rulemaking published elsewhere in this issue.

The Texas Deer Association commented in favor of adoption of the portions of the rules that do not involve fee increases.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter R, which authorizes the commission to issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer, subject to conditions established by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702725
Ann Bright
General Counsel
Texas Parks and Wildlife
Effective date: July 18, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 389-4775

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SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.191, 65.193, 65.201

The Texas Parks and Wildlife Commission adopts amendments to §§65.191, 65.193, and 65.201, concerning the Public Lands Proclamation, without changes to the proposed text as published in the April 20, 2007, issue of the *Texas Register* (32 TexReg 2256).

The amendment to §65.191, concerning Definitions, adds a definition for "special access permit." The special access permit authorizes access to a specific state park or part of a state park on a specific date for persons selected for public hunting privileges. The department wishes to differentiate between special permits issued for use on state parks and special permits issued for use on other units of public hunting lands, such as wildlife management areas. The amendment is necessary in order to comply with federal requirements that oblige the department to keep funds from the sale of permits for access to state parks separate from funds from the sale of permits for access to wildlife management areas. The amendment would explicitly acknowledge that distinction by rule. The effect of the proposed amendment would be nonsubstantive; it does not create a new fee and does not impose the existing fee on additional users.

The amendment to §65.193, concerning Access Permit Required and Fees, conforms the language of the section as necessary to reflect the applicability of the section's provisions to the special access permit. The amendment is necessary for the same reasons stated in the discussion of the amendment to §65.191 and will also be nonsubstantive in nature.

The amendment to §65.201, concerning Motor Vehicles, exempts disabled persons and persons assisting disabled persons from the provisions of 31 TAC Chapter 55, Subchapter J, which requires an off-highway vehicle (OHV) operated on public land to be affixed with a decal issued by the department for an $8 fee. The OHV fee was established to fund the purchase, development, and maintenance of OHV trails as part of a program administered by the department. The department's intent with respect to the funding of the OHV program is to rely on true off-road vehicle enthusiasts to fund the recreational trails created for that purpose. The department has determined that the use of mobility-enhancing conveyances by disabled persons participating in activities on public hunting lands is not consistent with the intent of Parks and Wildlife Code, Chapter 29 and should not be subject to the OHV fee.

The amendment to §65.191 will function by adding a definition for "special access permit" so that the meaning of the term will be clear and unambiguous.

The amendment to §65.193 will function by conforming the language of the section as necessary to reflect the applicability of the section's provisions to the special access permit.

The amendment to §65.201, concerning Motor Vehicles, will function by exempting disabled persons and persons assisting disabled persons from the provisions of 31 TAC Chapter 55, Subchapter J, which requires an off-highway vehicle (OHV) operated on public land to be affixed with a decal issued by the department for an $8 fee.

The department received one comment opposing adoption of the proposed amendments. The commenter stated that hunting should not be allowed on state parks. The department disagrees with the comment and responds that it is the policy of the Texas Parks and Wildlife Commission to provide the maximum amount of public hunting opportunity possible on state parks, consistent with prudent biological management and minimization of interference with other types of park visitation. No changes were made as a result of the comment.

The department received 14 comments supporting adoption of the proposed amendment.

The amendments are adopted under Parks and Wildlife Code, Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources; §11.027, which authorizes the commission to commission by rule to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department; §13.015, which authorizes the department to charge and collect park user fees for park services, and requires the commission to set the fees; §29.004, which authorizes the commission to exempt persons from the fee for an off-highway vehicle decal; and Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish conditions for taking wildlife resources on wildlife management areas and public hunting lands.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2007.

TRD-200702726

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: July 18, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 401. PRACTICE AND PROCEDURE

The Texas Commission on Fire Protection (the Commission) adopts, with changes, the amendments to §401.13, Computation of Time; §401.19, Petition for Adoption of Rules; §401.21, Examination Challenge; §401.23, Examination Waiver Request; §401.31, Disciplinary Proceedings in Contested Cases; §401.51, Preliminary Notice and Opportunity for Hearing; §401.101, Conduct and Decorum; §401.103, Discovery Sanctions. These amendments are adopted with changes to the proposed text published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2455) and will be republished.

The purpose of posting these amendments is to update language, make grammatical and punctuation corrections, and to capitalize the word "c" in commission when referring to the Texas Commission on Fire Protection.

No comments were received from the public regarding the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

37 TAC §401.13

These amendments are adopted under §419.022(b) of the Texas Government Code.

§401.13. Computation of Time.

(a) Computing Time. In computing any period of time prescribed or allowed by these rules, by order of the Agency, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or a legal holiday, in which event, the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. A party or attorney of record notified by mail under §401.61 of this title (relating to Record) is deemed to have been notified on the date on which notice is mailed.

(b) Extensions. Unless otherwise provided by statute, the time for filing any pleading, except a notice of protest, may be extended by order of the director, upon the following conditions:

(1) A written motion must be duly filed with the director prior to the expiration of the applicable period of time allowed for such filings.

(2) The written motion must show good cause for such extension and that the need is not caused by the neglect, indifference, or lack of diligence on the part of the movant.

(3) A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702759
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: July 19, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 936-3838

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SUBCHAPTER B. RULEMAKING PROCEEDINGS

37 TAC §401.19

These amendments are adopted under §419.022(b) of the Texas Government Code.

§401.19. Petition for Adoption of Rules.

(a) Any person may petition the Commission requesting the adoption of a new rule or an amendment to an existing rule as authorized by the APA, §2001.021.

(b) Petitions shall be sent to the executive director. Petitions shall be deemed sufficient if they contain:

(1) the name and address of the person or entity on whose behalf the application is filed;

(2) specific reference to the existing rule which is proposed to be changed, amended, or repealed;

(3) the exact wording of the new, changed, or amended proposed rule with new language underlined and deleted language dashed out;

(4) the proposed effective date; and

(5) a justification for the proposed action set out in narrative form with sufficient particularity to inform the Commission and any other interested person of the reasons and arguments on which the petitioner is relying.

(c) The executive director shall direct that the petition for adoption of rules be placed on the next agenda for discussion by the Commission or an advisory committee with subject matter jurisdiction in accordance with §401.11 of this title (relating to Conduct of Commission and Advisory Meetings).

(d) A request for clarification of a rule shall be treated as a petition for a rule change. The Commission staff may request submission of additional information from the applicant to comply with the requirements of subsection (b) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702765

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Effective date: July 19, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 936-3838

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SUBCHAPTER C. EXAMINATION APPEALS PROCESS

37 TAC §401.21, §401.23

These amendments are adopted under §419.022(b) of the Texas Government Code.

§401.21. Examination Challenge.

(a) An examinee who seeks to challenge the failure of an examination must submit a written request for an informal conference to the Fire Service Standards and Certification division director to discuss informal disposition of the complaint(s).

(b) An examination may be challenged only on the basis of examination content, failure to comply with Commission rules by a certified training facility, or problems in the administration of the examination.

(c) The written request must identify the examinee, the specific examination taken, the date of the examination, and the basis of the appeal.

(d) An examinee who challenges the content of an examination must identify the subject matter of the question(s) challenged and is not entitled to review the examination due to the necessity of preserving test security.

(e) The request must be submitted within 30 days from the date the grade report is posted on the website.

(f) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the challenge within 30 days of the request or as soon as practical. The examinee may accept or reject the settlement recommendations of the Commission staff. If the examinee rejects the proposed agreement, the examinee must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

§401.23. Examination Waiver Request.

(a) An individual who is required to take a Commission examination pursuant to §439.15 of this title (relating to Testing for Proof of Proficiency) or §439.17 of this title (relating to Testing for Certification Status) may petition the Commission for a waiver of the examination if the person's certificate or eligibility expired because of a good faith clerical error on the part of the individual or an employing entity.

(b) The waiver request must include a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with Commission requirements and that failure to comply was due to circumstances beyond the control of the certificate holder or applicant.

(c) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the waiver request within 30 days of the request, or as soon as practical. The applicant may accept or reject the settlement recommendations of the Commission staff. If the examinee rejects the proposed agreement, the applicant must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702766
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: July 19, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 936-3838

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SUBCHAPTER D. DISCIPLINARY PROCEEDINGS

37 TAC §401.31

These amendments are adopted under §419.022(b) of the Texas Government Code.

§401.31. Disciplinary Proceedings in Contested Cases.

(a) If the Commission staff recommends administrative penalties or any other sanction pursuant to Chapter 445 of this title (relating to Administrative Inspections and Penalties) or §401.105 of this title, (relating to Administrative Penalties) for alleged violations of laws or rules administered or enforced by the Commission and its staff, the respondent may request a preliminary staff conference in accordance with §401.41 of this title (relating to Preliminary Staff Conference).

(b) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the alleged violations of laws or rules within 30 days of the request or as soon as practical. The respondent may accept or reject the settlement recommendations of the Commission staff. If the respondent rejects the proposed agreement, the respondent must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the notice of the staff's recommended disciplinary action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702767
Gary L. Warren, Sr.
Executive Director
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Effective date: July 19, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 936-3838

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SUBCHAPTER F. CONTESTED CASES

37 TAC §401.51

These amendments are adopted under §419.022(b) of the Texas Government Code.

§401.51. Preliminary Notice and Opportunity for Hearing.

(a) In General. Except as otherwise provided by law, the procedure for the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a certificate is governed by Government Code, Chapter 2001, pertaining to Administrative Procedures and by 1 TAC Chapter 155 (relating to Rules of Procedures) adopted by SOAH effective January 2, 1998.

(b) Preliminary Notice. A revocation, suspension, annulment, or withdrawal of a certificate or license is not effective unless, before the institution of agency proceedings, the holder of the certificate receives preliminary notice of the facts or conduct alleged to warrant the intended action and an opportunity to show compliance with all requirements of law, as required by Government Code, §2001.054(c).

(c) Staff Conference. The holder of the certificate may request a conference with the Commission's staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case, pursuant to the Government Code, §419.906(c) and §2001.056, and the procedures provided in §401.41 of this title (relating to Preliminary Staff Conference).

(d) Request for Hearing. Except as otherwise provided by law, if an applicant's original application or request for certificate is denied, he or she shall have 30 days from the date of denial to make a written request for a hearing, and if so requested, the hearing will be granted and the provisions of the APA and this chapter with regard to contested cases shall apply.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702768
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: July 19, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 936-3838

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SUBCHAPTER G. CONDUCT AND DECORUM, SANCTIONS, AND PENALTIES

37 TAC §401.101, §401.103

These amendments are adopted under §419.022(b) of the Texas Government Code.

§401.101. Conduct and Decorum.

(a) Standard of conduct during adjudicative proceedings.

(1) The hearings officer and the party representative should refer to the Texas Disciplinary Rules of Professional Conduct for guidance, regardless of whether all participants are licensed attorneys (Texas State Bar Rules, Article 10, §9).

(2) Party representatives shall maintain high standards of professionalism during the administrative process and promote an atmosphere of civility and fairness.

(3) A party representative shall use these rules for legitimate purposes and not for dilatory purposes or to harass or intimidate other participants.

(b) Exclusion or disqualification of party representatives.

(1) Contemptuous conduct. A hearings officer may exclude or disqualify a party representative from participating in an agency hearing for contemptuous conduct. The hearings officer shall warn the party representative prior to exclusion, if possible. Contemptuous conduct includes:

(A) actual or threatened physical assault of any participant to the proceeding;

(B) knowingly or recklessly making a false statement of material fact or law to the hearings officer;

(C) counseling or assisting a witness to testify falsely;

(D) knowingly or recklessly offering or using false evidence;

(E) filing a frivolous or knowingly false pleading or other document, or filing a frivolous or knowingly false defense. A frivolous filing is one:

(i) primarily for the purpose of harassing or maliciously injuring another person; or

(ii) for which the party representative is unable to make a good faith argument for an extension, modification, or reversal of existing law;

(F) paying, offering to pay, or acquiescing in a payment or offer of payment to a witness based on the content of the witness' testimony or the outcome of the proceeding;

(G) continually violating an established rule of agency procedure or of evidence;

(H) raising superfluous objections or otherwise unreasonably delaying the proceeding or increasing the costs or other burden of the proceeding;

(I) misrepresenting, mischaracterizing, or misquoting facts or law to gain unfair advantage;

(J) except as otherwise permitted by law, communicating or causing someone else to communicate with the hearings officer without the knowledge and consent of opposing party representatives in order to gain unfair advantage or to influence the proceeding;

(K) using vulgar or abusive language during the proceeding; and

(L) engaging in disruptive conduct.

(2) Conflicts of interest. A hearings officer may disqualify a party representative from participating in a proceeding if the hearings officer decides that the party representative has a conflict of interest. Conflicts of interest can be, but are not limited to, the following:

(A) when a party representative who previously acted as a public officer or employee on a matter later attempts to represent a private client on the same matter, unless the appropriate government agency consents;

(B) when a party representative who serves as a public officer or employee on a matter negotiates for private employment with a party or party representative involved in the same matter;

(C) when a party representative who serves as a public officer or employee participates in a matter involving a former private client whom he or she represented on the same matter, unless no one may legally act in the attorney's stead;

(D) when an attorney engages in the practice of law while under suspension or in violation of a disciplinary order or judgment; and

(E) any other conflict of interest that, in the opinion of the hearings officer, offends the dignity and decorum of the proceeding.

(3) Procedures for excluding or disqualifying a party representative.

(A) Notice. The hearings officer shall state the specific reason for excluding or disqualifying a party representative on the record or in a written order. The hearings officer shall notify the affected party and representative of the exclusion or disqualification personally or by certified mail.

(B) Reasonable time for substitution. After the hearings officer has excluded or disqualified a party representative, the affected party or party representative shall have reasonable time to appeal to the executive director. If the exclusion or disqualification order is sustained, the party shall have a reasonable time to substitute a new representative. In determining a reasonable time, the hearings officer shall consider the right of opposing parties to have the proceeding resolved without undue delay. The hearings officer may therefore align the affected party with another party in interest instead of permitting a substitution.

(C) Appeal of exclusion or disqualification. A party or party representative may appeal the exclusion (if it is for a period of more than eight hours) or disqualification to the executive director pursuant to §401.47 of this title (relating to Appeal of an Interim Order).

(D) No further participation. After being disqualified from the proceeding, a party representative may not provide further assistance, either directly or indirectly, to any party with regard to the proceeding, except to the extent reasonably necessary to make an appeal of the disqualification order pursuant to §401.47 of this title (relating to Appeal of an Interim Order) and to complete the withdrawal and substitution of a new party representative.

(E) No recusal. The exclusion or disqualification of a party representative by a hearings officer is not a ground for recusal of the hearings officer in the same or any subsequent proceeding.

§401.103. Discovery Sanctions.

(a) After notice and opportunity for hearing, an order imposing sanctions, as are just, may be issued by the hearings officer for failure to comply with a discovery order or subpoena issued pursuant to a Commission for deposition or production of books, records, papers, or other objects. The order imposing sanctions may:

(1) disallow any further discovery of any kind or of a particular kind of disobedient party;

(2) require the party, the party's representative, or both to obey the discovery order;

(3) require the party, the party's representative, or both to pay reasonable expenses, including attorney fees, incurred by reason of the party's noncompliance;

(4) direct that the matters regarding which the discovery order was made shall be deemed established in accordance with the claim of the party obtaining the order;

(5) refuse to allow the disobedient party to support or oppose designated claims or defenses or prohibit the party from introducing designated matters into evidence;

(6) strike pleadings or parts thereof or abate further proceedings until the order is obeyed; or

(7) dismiss the action or proceeding or any part thereof or render a decision by default against the disobedient party.

(b) Appellate Review. Any discovery order or subpoena and any order imposing sanctions issued by the hearings officer is subject to review by an appeal to the executive director in accordance with §401.47 of this title (relating to Appeal of an Interim Order).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702769
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: July 19, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 936-3838

CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER D. CERTIFIED TRAINING FACILITIES

37 TAC §427.413

The Texas Commission on Fire Protection adopts new §427.413, concerning Liabilities. This new section is adopted with changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2458) and will be republished.

The new section has been added to new Subchapter D and clarifies the Curriculum and Testing, Equipment and Facilities and Insurance Coverage for approved fire academies throughout the state of Texas.

No comments were received from the public regarding the proposed new section.

This new section is adopted under Texas Government Code, §419.028.

§427.413. Liabilities.

(a) Curriculum and Testing.

(1) The school shall be able to provide license agreements with the publisher of any curriculum used. The school may not reproduce the curriculum, or any part thereof, without describing the purpose or having the written consent by said publisher.

(2) The school shall be able to provide a valid purchase receipt or license agreement of any published test banks, or any part thereof, used in the evaluation process of any course taught.

(b) Equipment and Facilities.

(1) The school shall be able to provide written agreements for the use of any equipment not owned by the school, but used during the instruction of any student. The agreement shall dictate the terms, liability, fees, and availability of maintenance records of such equipment.

(2) The school shall be able to provide written agreements of the use of any facilities or area, not otherwise public, but used during the instruction of any student. The agreement shall dictate the terms, liability, and fees of such facilities or area.

(c) Insurance Coverage. The school shall be able to provide a general liability policy issued by a company licensed to do business in the State of Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702761
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: July 19, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 936-3838

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CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.21

The Texas Commission on Fire Protection (Commission) adopts an amendment to §435.21, concerning Fire Service Joint Labor Management Wellness-Fitness Initiative. The amendment to §435.21 is adopted with changes to the proposed text published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2459) and will be republished.

The purpose of the adopted amendment is to eliminate subsection (e) relating to the effective date in which a fire department may have to put into place a written standard operating procedure made available to the Commission upon inspection, to correct any grammatical errors, punctuation errors and to capitalize the letter "c" in commission when referring to the Texas Commission on Fire Protection.

No comments were received from the public regarding the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

§435.21. Fire Service Joint Labor Management Wellness-Fitness Initiative.

(a) A fire department shall assess the wellness and fitness needs of the personnel in the department. The procedure used to make this assessment shall be written and made available for Commission inspection.

(b) A fire department shall develop and maintain a standard operating procedure to address those needs.

(c) The approach to the fitness needs of the department shall be based on the local assessment and local resources.

(d) The standard operating procedure shall be made available to the Commission for inspection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702762
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: July 19, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 936-3838

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CHAPTER 437. FEES

37 TAC §437.7

The Texas Commission on Fire Protection (the Commission) adopts an amendment to §437.7, concerning Standards Manual and Certification Curriculum Manual Fees. This amendment is adopted with changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2459) and will be republished.

The purpose of the adoption of this amendment is an address change to Thomson West Group and to make any grammatical or punctuation corrections, and to capitalize the word "c" in commission when referring to the Texas Commission on Fire Protection.

No comments were received from the public regarding the proposed amendment.

This amendment is adopted under §419.022(b) of the Texas Government Code.

§437.7. Standards Manual and Certification Curriculum Manual Fees.

(a) A fee of $12 will be charged for the compact disk containing the Commission's Standards Manual for Fire Protection Personnel and the Certification Curriculum Manual.

(b) A $12 annual compact disk subscription fee will be charged to receive revisions. The compact disk subscription will contain an entire revision of both manuals.

(c) The Commission does not provide printed copies of the manuals. A printed copy of the Commission's standards may be obtained from Thomson West, 610 Opperman Drive, Eagan, MN 55123, (800) 328-9352, by requesting "Title 37, Public Safety and Corrections" of the Texas Administrative Code. The web address for Thomson West is www.thomsonwest.com.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702763
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: July 19, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 936-3838

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CHAPTER 447. PART-TIME FIRE PROTECTION EMPLOYEE

37 TAC §447.1, §447.3

The Texas Commission on Fire Protection (Commission) adopts the amendments to §447.1, concerning Minimum Standards for Part-Time Fire Protection Employees; and §447.3, concerning Minimum Standards for Advanced Levels of Part-Time Certification. The amendment to §447.1 is adopted with changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2460) and will be republished. The amendment to §447.3 is adopted without changes to the proposed text as published and will not be republished.

The purpose of the adopted amendments is to update and correct any discrepancies in the rules and to eliminate the word "Advanced." There are only "Higher" levels of certification, not "Advanced" levels. The amendments are also adopted to correct any grammatical or punctuation errors and to capitalize the letter "c" in commission when referring to the Texas Commission on Fire Protection.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under §419.022(b) of the Texas Government Code.

§447.1. Minimum Standards for Part-Time Fire Protection Employees.

(a) Regulated entities that appoint part-time fire protection employees are subject to the same Commission rules that apply to fire departments as defined in §421.5(18) of this title.

(b) Part-time fire protection employees are subject to the same Commission rules that apply to full-time fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702764
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: July 19, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 936-3838

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT MANAGEMENT

The Texas Department of Transportation (department) adopts amendments to §9.2, concerning contract claim procedure and §9.38, concerning contract management. The amendments to §9.2 are adopted with changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2631). The amendments to §9.38 are adopted without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2631) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Contract claims for certain department contracts, including construction, maintenance, and professional service contracts, are governed by §9.2, Contract Claim Procedure.

The amendments to §9.2 distinguish the procedures for a contractor making a claim against the department, versus the department making a claim against the contractor. The department's authority to issue rules on the matter is Transportation Code, §201.112, which specifies that a "person with a claim" may make a contract claim using the procedures adopted by the department. These amendments are necessary to resolve confusion about where and when the department itself may file a claim.

Transportation Code, §201.112 does not explicitly limit to contractors the authority to file a claim. However, when the department has a claim against a contractor, the department may file suit in court. The amendments clarify that the department may, but is not required to, use the administrative proceeding to file a counter claim.

Subsections 9.2(a)(3) and (b) are amended to show that only a prime contractor may submit a claim to begin a claim proceeding under the section. The amendments also add that after a claim proceeding has begun the department may make a counter claim.

Subsection 9.2(b)(3) is added concerning the department's authority to file a claim in a court of competent jurisdiction. The departments ability to file suit in court is established by other law, and the section is not intended to affect such law.

Subsection 9.2(d) concerns definitions. Paragraph 9.2(d)(1) is amended to clarify an ambiguity in the existing language and to make the definition of "claim" consistent with the standard for filing a claim in paragraph 9.2(a)(2). The new language makes clear that a claim must relate to an actual request for relief. The definition of "claimant" is deleted because the term is no longer used in the section. The subsequent provisions are renumbered.

Subsection 9.2(g)(1) and (2)concerns the procedure for filing a claim. The amendments substitute "prime contractor" for "claimant" to clarify that only a prime contractor may file an original claim. A provision is added setting a deadline of 45 days for the department to file a counterclaim before the contract claim committee holds the informal meeting with the contractor.

Subsection 9.2(g)(3) and (5) adds that the prime contractor shall be given an opportunity to submit a responsive report and recommendation concerning the counterclaim. The provisions concerning the response to the recommendation by the contract claim committee substitute "prime contractor" for "claimant." The prime contractor files the original claim, and so the prime contractor is the proper entity that is responsible for responding to the committee's recommendation. The department may enforce in a court of competent jurisdiction a final department order issued under the section.

Subsection 9.38(f), Errors and omissions, is amended to show that the department will first give notice to a provider of errors and omissions, and will attempt to resolve a claim through informal resolution. The amendments also clarify that the department's authority to file suit in court is established by other law, and the section is not intended to affect such law. The amendment also clarifies that a contract claim under §9.2 must be initiated by a contractor.

COMMENTS

No comments on the proposed amendments were received.

Subparagraph (g)(2)(A) of §9.2 is revised to include the deadline for filing a claim resulting from the enforcement of a warranty. When a warranty period extends beyond when the department issues final acceptance of the project, the revised deadline will provide additional time for a prime contractor to file a claim that results from the enforcement of a warranty. Subparagraph (g)(2)(B) of §9.2 concerns the detailed report that must accompany a prime contractor's claim. The detailed report is more clearly defined as including relevant facts of the claim, cost or other data supporting the claim, a description of any additional compensation requested, and documents supporting the claim. Describing the contents in the rule will provide greater notice of the requirements to the prime contractor.

SUBCHAPTER A. GENERAL

43 TAC §9.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which provides the department with the authority to create a contract claims procedure for certain contracts.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.112.

§9.2. Contract Claim Procedure.

(a) Applicability. A claim shall satisfy the requirements in paragraphs (1) - (3) of this subsection.

(1) The claim is under a contract entered into and administered by the department, acting in its own capacity or as an agent of a local government, under one of the following statutes:

(A) Transportation Code, §22.018 (concerning the designation of the department as agent in contracting and supervising for aviation projects);

(B) Transportation Code, §391.091 (concerning erection and maintenance of specific information logo, major area shopping guide, and major agricultural interest signs);

(C) Transportation Code, Chapter 223 (concerning bids and contracts for highway improvement projects), subject to the provisions of subsection (c) of this section; or

(D) Government Code, Chapter 2254, Subchapters A and B (concerning professional or consulting services).

(2) The claim is for compensation, or for a time extension, or any other remedy.

(3) The claim is brought by a prime contractor.

(b) Pass-through claim; claim and counter claim.

(1) A prime contractor may make a claim on behalf of a subcontractor only if the prime contractor is liable to the subcontractor on the claim.

(2) Only a prime contractor may submit a claim to begin a claim proceeding under this section. After a claim proceeding has begun the department may make a counter claim.

(3) This section does not abrogate the department's authority to file a claim in a court of competent jurisdiction. The procedure for the department to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.

(c) Claim concerning comprehensive development agreement. A claim under a comprehensive development agreement (CDA) entered into under Transportation Code, Chapter 223, Subchapter E, may be processed under this section if the parties agree to do so in the CDA, or if the CDA does not specify otherwise. However, if the CDA specifies that a claim procedure authorized by §9.6 of this chapter (relating to Contract Claim Procedure for Comprehensive Development Agreement) applies, then any claim arising under the CDA shall be processed and resolved in accordance with the claim procedure authorized by §9.6 of this chapter and not by this section.

(d) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise, except that when used in subsection (c) of this section, the terms claim, comprehensive development agreement and CDA shall have the meanings given such terms stated in §9.6 of this chapter.

(1) Claim--A claim for compensation, for a time extension, or for any other remedy arising from a dispute, disagreement, or controversy concerning respective rights and obligations under the contract.

(2) Commission--The Texas Transportation Commission.

(3) Committee--The Contract Claim Committee.

(4) Department--The Texas Department of Transportation.

(5) Department office--The department district, division, or office responsible for the administration of the contract.

(6) Department office director--The chief administrative officer of the responsible department office; the officer shall be a district engineer, division director, or office director.

(7) District--One of the 25 districts of the department.

(8) Executive director--The executive director of the Texas Department of Transportation.

(9) Prime contractor--An individual, partnership, corporation, or other business entity that is a party to a written contract with the state of Texas which is entered into and administered by the department under Transportation Code, §22.018, §391.091, Chapter 223, or Government Code, Chapter 2254, Subchapters A and B.

(10) Project--The portion of a contract that can be separated into a distinct facility or work unit from the other work in the contract.

(e) Contract claim committee. The executive director shall name the members and chairman of a committee or committees to serve at the executive director's pleasure. The chairman may add members to the committee, including one or more district engineers who will be assigned to the committee on a rotating basis, with a preference, if possible, for district engineers of districts that do not have a current contractual relationship with the prime contractor involved in a contract claim.

(f) Negotiated resolution. To every extent possible, disputes between a prime contractor and the department's project engineer should be resolved during the course of the contract.

(g) Procedure.

(1) Exclusive procedure. Except as provided in subsection (c) of this section, a prime contractor shall file a claim under the procedure in this subsection. A claim filed by the prime contractor must

be considered first by the committee before the claim is considered in a contested case hearing.

(2) Filing claim.

(A) The prime contractor shall file a claim after completion of the contract or when required for orderly performance of the contract. For a claim resulting from the enforcement of a warranty, a prime contractor shall file the claim no later than one year after expiration of the warranty period. For all other types of claims, a prime contractor shall file the claim no later than one year after the earlier of the following:

(i) the department issues notice to the contractor that it is in default, or the department terminates the contract; or

(ii) the department issues final acceptance of the project that is the subject of the contract.

(B) To file a claim, a prime contractor shall file a contract claim request and a detailed report that provides the basis for the claim. The detailed report shall include relevant facts of the claim, cost or other data supporting the claim, a description of any additional compensation requested, and documents supporting the claim. The prime contractor shall file the claim with the department's construction division, the department engineer under whose administration the contract was or is being performed, or the committee.

(C) A claim filed by a prime contractor shall include a certification as follows: I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the department is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(D) A defective certification shall not deprive the department of jurisdiction over the claim. Prior to the entry by the department of a final decision on the claim the department shall require a defective certification to be corrected.

(E) The construction division or department engineer shall forward the contract claim request and detailed report to the committee.

(F) The deadline for the department to file a counter claim is 45 days before the committee holds an informal meeting under paragraph (3) of this subsection.

(3) Evaluation of claim by the committee.

(A) The committee's responsibility is to gather information, study the relevant issues, and meet informally with the prime contractor if requested. The committee shall attempt to resolve the claim.

(B) The committee shall secure detailed reports and recommendations from the responsible department office, and may confer with any other department office deemed appropriate by the committee. The committee shall give the prime contractor the opportunity to submit a responsive report and recommendation concerning a counter claim filed by the department.

(C) The committee shall afford the prime contractor an opportunity for a meeting to informally discuss the disputed matters and to provide the prime contractor an opportunity to present relevant information and respond to information the committee has received from the department office. Proceedings before the committee are an attempt to mutually resolve a claim without litigation and are not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph. All oral communications, reports, or other written documentation prepared by department staff in connection with the analysis of a claim are part of the attempt to mutually resolve a claim without litigation, and are also not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph.

(D) The committee chairman shall give written notice of the committee's decision on the claim to the department and prime contractor. The department and prime contractor are presumed to receive the decision three days after it is sent by United States mail.

(i) If the prime contractor does not object to the committee's decision, the prime contractor shall file a written statement with the committee's chairman stating that the prime contractor does not object. The prime contractor shall file the statement no later than 20 days after receipt of the committee's decision. The chairman shall then prepare a document showing the settlement of the claim including, when required, payment to the prime contractor, and the prime contractor's release of all claims under the contract. The prime contractor shall sign it. The executive director may approve the settlement, or may request the commission to approve the settlement by issuance of an order. The executive director shall then implement the resolution of the claim. If contemplated in the committee's decision, the executive director shall expend funds as specified in the decision. If contemplated in the committee's decision, the executive director shall order the prime contractor to make payment to the department.

(ii) If the prime contractor objects to the committee's decision the prime contractor shall file a petition with the executive director no later than 20 days after receipt of the committee's decision requesting an administrative hearing to litigate the claim under the provisions of §§1.21 et seq. of this title (relating to Procedures in Contested Cases).

(iii) If the prime contractor fails to file a written petition under clause (ii) of this subparagraph within 20 days of receipt of the committee's decision, the prime contractor waives his right to a contested case hearing. All further litigation of claims on the project or contract by the prime contractor shall be barred by the doctrines of issue and claim preclusion. The chairman shall then prepare an order implementing the resolution of the claim under the committee's decision, and stating that further litigation on the claim is prohibited. The executive director shall then issue the order and implement the resolution of the claim. If contemplated in the committee's decision, the executive director shall expend funds as specified in the decision. If contemplated in the committee's decision, the executive director shall order the prime contractor to make payment to the department.

(4) Decision after contested case hearing. This paragraph applies if a contested case hearing has been held on a claim. The administrative law judge's proposal for decision shall be submitted to the executive director for adoption. The executive director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The executive director shall provide a written statement containing the reason and legal basis for any change.

(5) This section does not abrogate the department's authority to enforce in a court of competent jurisdiction a final department order issued under the section.

(h) Claim forfeiture. A claim against the department shall be forfeited to the department by any person who corruptly practices or attempts to practice any fraud against the department in the proof, statement, establishment, or allowance thereof. In such cases the department shall specifically find such fraud or attempt and render judgment of forfeiture. This subsection applies only if there is clear and con-

vincing evidence that a person knowingly presented a false claim for the purpose of getting paid for the claim.

(i) Relation of contract claim proceeding and sanction proceeding.

(1) Except as provided in paragraphs (2) and (3) of this subsection, the processing of a contract claim under this section is a separate proceeding and shall not affect the executive director's assessment of a contract sanction under Subchapter G of this chapter (relating to Contractor Sanctions).

(2) If a contested issue arises that is relevant both to a contract claim proceeding and a sanction proceeding concerning the same contract, the issue shall be resolved in the proceeding that the executive director refers first for a contested case hearing under Chapter 1, Subchapter E of this title (relating to Procedures in Contested Cases). If the issue is decided in the first proceeding that decision shall apply to and be binding in all subsequent department proceedings.

(3) This paragraph applies to a contract under which the parties agreed to submit questions which may arise to the decision of a department engineer. If a dispute under the contract leads to a contract claim proceeding or sanction proceeding, the engineer's decision shall be upheld unless it was based on fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest judgment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702746
Bob Jackson
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Texas Department of Transportation
Effective date: July 19, 2007
Proposal publication date: May 11, 2007
For further information, please call: (512) 463-8683

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SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §9.38

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which provides the department with the authority to create a contract claims procedure for certain contracts.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.112.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2007.

TRD-200702747
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: July 19, 2007
Proposal publication date: May 11, 2007
For further information, please call: (512) 463-8683

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Board of Nurse Examiners

Title 22, Part 11

TRD-200702811
Filed: July 2, 2007

♦ ♦ ♦

Proposed Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Part 4, Chapter 58, Rental Purchase Agreements. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§58.1. Authority.

§58.10. Definitions.

§58.21. Review Requirements--Rental Agreements.

§58.70. Responsibilities of Merchants.

§58.80. Fees.

§58.90. Administrative Penalties and Sanctions.

TRD-200702834
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 3, 2007

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Part 4, Chapter 65, Boilers. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§65.1. Authority.

§65.10. Definitions.

§65.20. Licensing/Certification/Registration Requirements.

§65.30. Exemptions.

§65.50. Reporting Requirements.

§65.60. Responsibilities of the Department.

§65.65. Boiler Board.

§65.70. Responsibilities of the Licensee/Certificate Holder/Registrant.

§65.80. Fees.

§65.90. Sanctions.

§65.100. Technical Requirements.

TRD-200702833

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 3, 2007

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The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Part 4, Chapter 73, Electricians. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§73.1. Authority.

§73.10. Definitions.

§73.20. Licensing Requirements--Applicant and Experience Requirements.

§73.21. License Requirements--Examination.

§73.22. License Requirements--General.

§73.23. Licensing Requirements--Renewal.

§73.24. Licensing Requirements--Waiver of Examination Requirements.

§73.25. Continuing Education.

§73.26. Documentation of Required On-The-Job Training.

§73.27. Licensing Requirements--Temporary Apprentices.

§73.28. Licensing Requirements--Emergency Licenses.

§73.30. Exemptions.

§73.40. Insurance Requirements.

§73.51. Electrical Contractor's Responsibilities.

§73.52. Electrical Sign Contractor's Responsibilities.

§73.53. Licensee's Responsibilities.

§73.60. Standards of Conduct for Licensee.

§73.65. Advisory Board.

§73.70. Responsibilities of Licensee--Standards of Conduct.

§73.80. Fees.

§73.90. Sanctions--Administrative Sanctions/Penalties.

§73.100. Technical Requirements.

TRD-200702835
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 3, 2007

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Board of Nurse Examiners

Title 22, Part 11

The Board of Nurse Examiners will review and consider whether to re-adopt, re-adopt with amendments, or repeal Chapter 211, relating to General Provisions. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to E. Joy Sparks, Assistant General Counsel, 333 Guadalupe St., Suite 3-460, Austin, Texas 78701, Fax: (512) 305-8101, or joy.sparks@bne.state.tx.us. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comments period prior to final adoption of any repeal, amendment, or adoption.

TRD-200702806
Joy Sparks
Assistant General Counsel
Board of Nurse Examiners
Filed: July 2, 2007

♦ ♦ ♦

The Board of Nurse Examiners will review and consider whether to re-adopt, re-adopt with amendments, or repeal Chapter 217, relating to Licensure, Peer Assistance and Practice. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current procedures and practices of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to E. Joy Sparks, Assistant General Counsel, 333 Guadalupe St., Suite 3-460, Austin, Texas 78701, Fax: (512) 305-8101, or joy.sparks@bne.state.tx.us. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comments period prior to final adoption of any repeal, amendment, or adoption.

TRD-200702807

Joy Sparks
Assistant General Counsel
Board of Nurse Examiners
Filed: July 2, 2007

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The Board of Nurse Examiners will review and consider whether to re-adopt, re-adopt with amendments, or repeal Chapter 219, relating to Advanced Nurse Practitioner Program. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current procedures and practices of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to E. Joy Sparks, Assistant General Counsel, 333 Guadalupe St., Suite 3-460, Austin, Texas 78701, Fax: (512) 305-8101, or joy.sparks@bne.state.tx.us. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comments period prior to final adoption of any repeal, amendment, or adoption.

TRD-200702808
Joy Sparks
Assistant General Counsel
Board of Nurse Examiners
Filed: July 2, 2007

♦ ♦ ♦

The Board of Nurse Examiners will review and consider whether to re-adopt, re-adopt with amendments, or repeal Chapter 223, relating to Fees. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to E. Joy Sparks, Assistant General Counsel, 333 Guadalupe St., Suite 3-460, Austin, Texas 78701, Fax: (512) 305-8101, or joy.sparks@bne.state.tx.us. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comments period prior to final adoption of any repeal, amendment, or adoption.

TRD-200702809
Joy Sparks
Assistant General Counsel
Board of Nurse Examiners
Filed: July 2, 2007

♦ ♦ ♦

Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board (the Board) files this notice of intent to review 31 Texas Administrative Code (TAC), Part 10, Chapter 359, Water Banking, in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the rules set forth in this chapter continues to exist although particular rules may require amendments to reflect recent legislative changes.

As required by §2001.039, Texas Government Code, the Board will make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 359 continues to exist and will publish its proposal to readopt and/or readopt with amendments for public comments in the near future once its review has concluded. The comment period will last 30 days beginning with the publication of a notice to readopt and/or readopt the provisions in this chapter.

Comments or questions regarding this rule review may be submitted to Robert R. Flores, Attorney, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to robert.flores@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200702777
Marisol Saenz
Attorney
Texas Water Development Board
Filed: June 29, 2007

♦ ♦ ♦

Adopted Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts (comptroller) readopts all sections under the following subchapters of Texas Administrative Code, Title 34, Part 1, Chapter 3 (Tax Administration).

Subchapter D (Occupation Tax on Sulphur Producers):

§3.41. Definition and Due Dates.

Subchapter F (Motor Vehicle Sales Tax):

§3.61. Credit for Motor Vehicle Sales and Use Tax Paid to Another State.

§3.62. Insurance Settlements.

§3.63. Foreign Diplomatic Officials.

§3.64. Motor Vehicle Transferred on Incorporation.

§3.65. Motor Vehicles Purchased Through Another Name.

§3.66. Community Property.

§3.67. Repossessions.

§3.68. United States and Foreign Military Personnel Stationed in Texas.

§3.69. Motor Vehicle Use Tax; Interstate Commerce; Motor Carriers.

§3.70. Motor Vehicle Leases and Sales.

§3.71. Definition of Resident and New Resident.

§3.72. Farm Machines, Timber Machines and Trailers.

§3.73. Qualifying for Fair Market Value Deduction and Determination of Fair Market Value for Replaced Vehicles.

§3.74. Seller Responsibility.

§3.75. Refunds, Payments Under Protest, Payment Instruments and Dishonored Payments.

§3.76. Driver Education Cars.

§3.78. Motor Vehicles Rentals.

§3.79. Standard Presumptive Value.

§3.80. Motor Vehicles Awarded as Prizes.

§3.82. Exemption for Churches or Religious Societies.

§3.84. Exemption for Orthopedically Handicapped Person.

§3.86. Destroyed and Repaired Motor Vehicles.

§3.88. Moveable Specialized Equipment and Off-Road Vehicles.

§3.90. Motor Vehicles Purchased for Use Outside of Texas.

§3.94. Filing Reports.

§3.95. Motor Vehicle Sales Tax Resale Certificate; Sales for Resale.

§3.96. Imposition and Collection of a Surcharge on Certain Diesel Powered Motor Vehicles.

Subchapter G (Cigarette Tax):

§3.101. Cigarette Tax and Stamping Activities.

§3.102. Applications, Definitions, Permits, and Reports.

Subchapter H (Cigar and Tobacco Tax):

§3.121. Definitions, Imposition of Tax, Permits, and Reports.

Subchapter I (Miscellaneous Occupation Tax):

§3.143. Oil, Gas, and Related Well Service.

Subchapter J (Petroleum Products Delivery Fee):

§3.151. Imposition, Collection, and Bonds or Other Security of the Fee.

Subchapter T (Manufactured Housing Sales and Use Tax):

§3.481. Imposition and Collection of Tax.

Subchapter V (Franchise Tax):

§3.541. Exemptions.

§3.544. Reports and Payments.

§3.545. Extensions.

§3.546. Taxable Capital: Nexus.

§3.547. Taxable Capital: Accounting Methods.

§3.548. Taxable Capital: Close and S Corporations.

§3.549. Taxable Capital: Apportionment.

§3.550. Taxable Capital: Stated Capital.

§3.551. Taxable Capital: Surplus.

§3.552. Taxable Capital: In Process of Liquidation.

§3.553. Taxable Capital: Oil and Gas Reserves.

§3.554. Earned Surplus: Nexus.

§3.555. Earned Surplus: Computation.

§3.556. Earned Surplus: S Corporations.

§3.557. Earned Surplus: Apportionment.

§3.558. Earned Surplus: Officer and Director Compensation.

§3.559. Earned Surplus: Temporary Credit.

§3.560. Banking Corporations.

§3.561. Enterprise Zones and Defense Economic Readjustment Zones.

§3.562. Limited Liability Companies.

§3.563. Savings and Loan Associations.

§3.565. Survivors of Mergers.

§3.566. Title Insurance Holding Companies.

§3.567. Additional Tax on Earned Surplus.

§3.568. Changes in Corporate Organization.

§3.569. Texas Youth Commission Credit.

§3.570. Liens.

§3.572. 1992 Transition.

§3.575. Annual Extensions/Electronic Funds Transfer.

§3.576. Earned Surplus: Allocation.

§3.577. Credit for Sales Tax Paid on Property Used in Manufacturing.

§3.578. Economic Development Credits.

§3.579. Child Care Credits.

§3.580. Credit for Hiring Persons with Disabilities.

§3.594. Margin: Temporary Credit.

Subchapter Z (Coastal Protection Fee):

§3.692. Definitions, Reporting Requirements, and Amount of Fee.

The comptroller has reviewed Chapter 3, Subchapters D, F, G, H, I, J, T, V, and Z, and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to these rules will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2685). No comments were received concerning the readoption of these rules.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 3.

TRD-200702838
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: July 3, 2007

♦ ♦ ♦

The Comptroller of Public Accounts (comptroller) readopts the following sections under Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter O (State Sales and Use Tax):

§3.324. Oil, Gas, and Related Well Service.

§3.325. Refunds, Interest, and Payments under Protest.

§3.327. Taxpayer's Bond or Other Security.

§3.328. Optional Reporting Methods for Grocers and Other Vendors.

§3.329. Enterprise Projects, Enterprise Zones, and Defense Readjustment Zones.

§3.330. Data Processing Services.

§3.331. Transfers of Common Interests in Tangible Personal Property; Intercorporate Services.

§3.332. Drilling Equipment.

§3.333. Security Services.

§3.336. Gold, Silver, Coins, and Currency.

§3.337. Gratuities.

§3.338. Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers.

§3.339. Statute of Limitations.

§3.341. Sales of Governmental Publications, Records, or Documents.

§3.342. Information Services.

§3.343. Credit Reporting Services.

§3.344. Telecommunications Services.

§3.346. Use Tax.

§3.347. Improvements to Realty.

§3.354. Debt Collection Services.

§3.355. Insurance Services.

§3.356. Real Property Service.

§3.357. Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance.

§3.358. Maquiladoras.

§3.360. Customs Brokers.

§3.361. Practice and Procedure for Texas Customs Broker's License Denial, Suspension, and Revocation.

§3.362. Labor Relating to Increasing Capacity in a Production Unit in a Petrochemical Refinery or Chemical Plant.

§3.364. Staff Leasing Services.

§3.365. Sales of Clothing and Footwear During a Three-day Period in August.

§3.366. Internet Access Services.

§3.367. Timber Items.

§3.368. Certified Public Accountant (CPA) Audit Program.

The comptroller has reviewed Chapter 3, Subchapter O, and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to Subchapter O will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2685). No comments were received concerning the readoption of these rules.

TRD-200702837
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: July 3, 2007

♦ ♦ ♦

The Comptroller of Public Accounts (comptroller) readopts all sections under Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter Y (Controlled Substances Tax):

§3.682. Tax Payment Certificates.

§3.683. Jeopardy Determinations.

The comptroller has reviewed Subchapter Y and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to this subchapter will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2703). No comments were received concerning the readoption of these sections.

TRD-200702836
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: July 3, 2007

♦ ♦ ♦

Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission (commission) has completed its review of Chapter 301, Definitions, in accordance with Government Code, §2001.039. Notice of the rule review, along with a proposed amendment to §301.1, was published in the April 13, 2007, edition of the *Texas Register* (32 TexReg 2085). The amendment related to the term "tote board" and the definition of "race meeting".

The commission received no comments on the rule review or the rule amendment in response to the notice.

The commission has determined that the reasons for initially adopting the chapter continue to exist and readopts the chapter, along with the amendment as published in this issue of the *Texas Register*.

This completes the commission's review of Chapter 301.

TRD-200702657
Mark Fenner
General Counsel
Texas Racing Commission
Filed: June 26, 2007

♦ ♦ ♦

The Texas Racing Commission (commission) has completed its review of Chapter 319, Veterinary Practices and Drug Testing, in accordance with Government Code, §2001.039. Notice of the rule review was published in the April 13, 2007, edition of the *Texas Register* (32 TexReg 2086). Proposed amendments to §§319.102, 319.111, 319.202, 319.203, and 319.204, as well as new §319.108, were published in the same edition.

The commission received no comments on the rule review, the proposed rule amendments, or the proposed new rule in response to the notice.

The commission has determined that the reasons for initially adopting the chapter continue to exist and readopts the chapter, along with the amendments as published in this issue of the *Texas Register*.

This completes the commisison's review of Chapter 319.

TRD-200702658
Mark Fenner
General Counsel
Texas Racing Commission
Filed: June 26, 2007

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §7.10(b)

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	$100	$100	$100
Examination	1071	***	**
Registration by Examination - Resident	155	*355	*355
Registration by Examination - Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal - Resident	*305	*305	*305
Active Renewal - Nonresident	*400	*400	*400
Active Renewal 1-90 days late - Resident	*457.50	*457.50	*457.50
Active Renewal 91-365 days late - Resident	*610	*610	*610
Active Renewal 1-90 days late - Nonresident	*600	*600	*600
Active Renewal 91-365 days late - Nonresident	*800	*800	*800
Emeritus Renewal - Resident	25	25	25
Emeritus Renewal- Nonresident	183	183	183
Emeritus Renewal 1-90 days late - Resident	37.50	37.50	37.50
Emeritus Renewal 91-365 days late - Resident	50	50	50
Emeritus Renewal 1-90 days late - Nonresident	274.50	274.50	274.50
Emeritus Renewal 91-365 days late - Nonresident	366	366	366
Inactive Renewal - Resident	25	25	25
Inactive Renewal - Nonresident	125	125	125
Inactive Renewal 1-90 days late - Resident	37.50	37.50	37.50
Inactive Renewal 91-365 days late - Resident	50	50	50
Inactive Renewal 1-90 days late - Nonresident	187.50	187.50	187.50
Inactive Renewal 91-365 days late - Nonresident	250	250	250
Reciprocal Reinstatement	620	620	620
Change in Status - Resident	65	65	65
Change in Status - Nonresident	95	95	95
Reinstatement - Resident	685	685	685
Reinstatement - Nonresident	775	775	775
Certificate of Standing - Resident	30	30	30
Certificate of Standing - Nonresident	40	40	40
Replacement or Duplicate Wall Certificate - Resident	40	40	40
Replacement of Duplicate Wall Certificate - Nonresident	90	90	90
Duplicate Pocket Card	0	0	0
Reopen Fee for closed candidate files	25	25	25
Examination - Administrative Fee	-	40	-
Examination - Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100
Administrative Fee for 1.5 Hour LARE Review	-	22	-
Administrative Fee for 1 Hour LARE Review	-	17	-

*These fees include a $200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund. The fee for initial architectural registration by examination does not include the $200 professional fee. Under the statute, the professional fee is imposed only upon each renewal of architectural registration.

**NCIDQ fee: 2007--$720, 2008--$720, 2009--$730. Specified amounts are maximum estimates made by NCIDQ, the examination provider for the entire examination. Contact the Board or the examination provider for the fee for each section of the examination.

***LARE fee: Fiscal Year 2007--$885, Fiscal Year 2008--$935, Fiscal Year 2009--$950. Specified amounts are estimates made by CLARB, the examination provider for the entire examination. Contact the Board or the examination provider for the fee for each section of the examination.

Figure: 22 TAC §577.15

(a) **EXAMINATIONS**	**FEE**
Texas State Board Licensing Exam (SBE)	$155
Special License	$155
(b) **APPLICATION PROCESSING** (except for Provisional License)	$50

(c) **RENEWALS**	**BOARD FEE**	**PROF. FEE**	**TOTAL FEE**
License Renewal (current)	$141 [~~$128~~]	$200	$341 [~~$328~~]
Delinquent Renewals (90 days or less)	$212 [~~$192~~]	$200	$412 [~~$392~~]
Delinquent Renewals (over 90 days but less than one year)	$283 [~~$256~~]	$200	$483 [~~$456~~]
Inactive Renewals	$141 [~~$128~~]	$0	$141 [~~$128~~]
Delinquent Inactive Renewal (90 days or less)	$212 [~~$192~~]	$0	$212 [~~$192~~]
Delinquent Inactive Renewals (over 90 days but less than one year)	$283 [~~$256~~]	$0	$283 [~~$256~~]
Special License	$136 [~~$123~~]	$200	$336 [~~$323~~]
Delinquent Special License Renewals (90 days or less)	$204 [~~$185~~]	$200	$404 [~~$385~~]
Delinquent Special License Renewals (over 90 days but less than one year)	$272 [~~$246~~]	$200	$472 [~~$446~~]
(d) **PROVISIONAL LICENSE**	$255	$0	$255

(e) **OPEN RECORDS**
Charges for all open records and other goods/services such as tapes, disks, will be in accordance with the Office of the Attorney General 1 TAC §§70.1 - 70.11 (relating to Cost of Copies of Public Information) [~~Texas Building and Procurement Commission 1 TAC §§111.61 - 111.71--"Charges for Public Records"~~]

(f) **RETURNED CHECK FEE**	$25

Figure: 31 TAC §65.72(b)(2)(C)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	32	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and Smallmouth bass.		14	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white.	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30*
*Special Regulation: One black drum over 52 inches may be retained per day as part of the five-fish bag limit.			
Drum, red.	3*	20	28*
*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.			
Flounder: all species, their hybrids, and subspecies.	10*	14	No limit
*Special Regulation: The daily bag limit of 10 is the possession limit allowed for flounder for those fishing with a recreational license. The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 60 flounder, except on board a licensed commercial shrimp boat.			

Grouper, goliath.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	15	14	No limit
Marlin, blue.	No limit	131	No limit
Marlin, white.	No limit	86	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish.	No limit	84	No limit
Saugeye.	3	18	No limit
Seatrout, spotted.	10	15	25*
*Special Regulation: One spotted seatrout greater than 25 inches may be retained per day.			
Shark: all species, their hybrids, and subspecies.	1	24	No limit
Sheepshead.	5	13*	No limit
*Special Regulation: Beginning on September 1, 2008, the size limit will be 14 inches. Beginning on September 1, 2009, the size limit will be 15 inches.			
Snapper, lane.	No limit	8	No limit
Snapper, red.	4*	15	No limit
*Special Regulation: Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook.			
Snapper, vermilion.	No limit	10	No limit
Snook.	1	24	28
Tarpon.	1	85	No limit
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Tripletail.	3	17	No limit
Walleye.	5*	No limit	No limit
*Special regulation: Two walleye of less than 16 inches may be retained per day.			

Figure: 31 TAC §65.72(b)(2)(D)(i)

Location (County)	**Daily Bag**	**Minimum Length (Inches)**	**Special Regulation**
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lake Texoma (Cooke and Grayson).	5 (in any combination)	14	
In all waters in the Lost Maples State Natural Area (Bandera).	0	No limit	Catch and release only.
Bass: largemouth and smallmouth			
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with spotted bass)	14	Possession limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Possum Kingdom (Palo Pinto, Stephens, Young), Proctor (Comanche), and Ratcliff (Houston).	5	16	
Lakes Aquilla (Hill) , Bellwood (Smith), Braunig (Bexar), Bright (Williamson), Brushy Creek (Williamson), Bryan (Brazos), Calaveras (Bexar), Casa Blanca (Webb), Cleburne State Park (Johnson), Cooper (Delta and Hopkins), Fairfield (Freestone), Gilmer (Upshur), Jacksonville (Cherokee), Marine Creek Reservoir (Tarrant), Meridian State Park (Bosque), Old Mount Pleasant City (Titus), Pflugerville (Travis), Rusk State Park (Cherokee), and Welsh (Titus).	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No limit	Catch and release and only.
Lakes Alan Henry (Garza) and O.H. Ivie (Coleman, Concho, and Runnels).	5	No limit	It is unlawful to retain more than two bass of less than 18 inches in length.

Purtis Creek State Park Lake (Henderson and Van Zandt), and Raven (Walker).	0	No limit	Catch and release only except that any bass 21 inches or greater in length may be retained in a live well or other aerated holding device and immediately transported to the Purtis Creek or Huntsville State Park, or Gibbons Creek weigh stations. After weighing, the bass must be released immediately back into the lake or donated to the ShareLunker Program.
Lakes Bridgeport (Jack and Wise), Burke-Crenshaw (Harris), Caddo (Marion and Harrison), Davy Crockett (Fannin) , Grapevine (Denton and Tarrant), Georgetown (Williamson), Madisonville (Madison), San Augustine City (San Augustine), and Sweetwater (Nolan).	5	14 - 18 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Athens (Henderson), Bastrop (Bastrop), Buescher State Park (Bastrop), Houston County (Houston), Joe Pool (Dallas, Ellis, and Tarrant), Mill Creek (Van Zandt), Murvaul (Panola), Nacogdoches (Nacogdoches), Pinkston (Shelby), Timpson (Shelby), Town (Travis), and Walter E. Long (Travis).	5	14 - 21 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Gibbons Creek Reservoir (Grimes), Monticello (Titus), and Ray Roberts (Cooke, Denton, and Grayson).	5	14 - 24 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Lake Fork (Wood, Rains and Hopkins).	5	16 - 24 inch Slot limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Alan Henry (Garza), and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12 - 15 inch Slot limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: spotted.			
Lake Alan Henry (Garza).	3	18	
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with largemouth bass)	No limit	Possession Limit is 10.
Bass: striped and white bass, their hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5	No limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.

Lake Possum Kingdom (Palo Pinto, Stephens, Young) and Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: white.			
Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).	25	No limit	
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	
North Concho River (Tom Green) from O.C. Fisher Dam to Bell Street Dam, South Concho River (Tom Green) from Lone Wolf Dam to Bell Street Dam.	5 (in any combination)	No limit	
Community fishing lakes.	5 (in any combination)	No limit	
Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead.			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
Crappie: black and white crappie, their hybrids and subspecies.			

Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	10	Possession limit is 50. From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Coleto Creek Reservoir (Goliad and Victoria), Colorado City (Mitchell), Fairfield (Freestone), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
Nasworthy (Tom Green).	No limit	No limit	
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No limit	Possession limit 1,000 in any combination.
Trout: Rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

Figure: 31 TAC §65.72(b)(2)(D)(ii)

Location	Daily Bag	Minimum Length (Inches)	Special Regulation
Seatrout, spotted.	5*	15	25**
All inside waters south of marker 21.			
*Special Regulation: The daily bag limit of 5 is the possession limit allowed for spotted seatrout. **Special Regulation: One spotted seatrout greater than 25 inches may be retained per day.			

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Proposals: Texas-Israel Exchange Fund Grant Program

Statement of Purpose.

Pursuant to the Texas Agriculture Code, Chapter 45, the Texas Department of Agriculture's (TDA) Texas-Israel Exchange Fund (TIE) Board in cooperation with the Binational Agricultural Research and Development Fund (BARD) Board are hereby requesting for a new submission of proposals for projects for the joint TDA-TIE/BARD Grant Program. The purpose of this grant program is to promote mission oriented, applied, collaborative agricultural research and development activities conducted jointly by scientists in Texas and Israel. Funded projects are expected to be of interest to the relevant agricultural industries and yield applicable results within 3 years and possible public-private partnerships. Benefits would result through developing solutions to mutual agricultural problems that will in turn foster the development of trade, mutual assistance, and business relations between Texas and Israel. The TIE and BARD Boards may award a total amount of up to $1.5 million cooperatively, and with the required matching of the recipient institutions in Texas, this amount will be increase to $3 million.

Submission Dates/Locations.

Proposals and Signature Pages must reach BARD and TDA not later than September 6, 2007.

PDF file of the complete proposal is to be uploaded to the BARD and TDA websites: www.bard-isus.com and www.tda.state.tx.us.

Twelve (12) hard copies and one (1) electronic copy of the proposal copy in PDF format (either by diskette or CD Rom) must arrive not later than 5:00 p.m. on September 6, 2007 to each of the following: Texas Department of Agriculture, Attn: Catherine Wright Steele, P.O. Box 12847, Austin, Texas 78711 or physical address of 1700 North Congress, 11th Floor, Austin, Texas 78701; and the main BARD office, Agricultural Center, P.O. Box 6, Bet Dagan, 50250, Israel - physical address is: Room 412, Old Administration Building, Volcani Center, HaKirya HaHaklait, Derech Hamakabim, Rishon LeZion, Israel.

Signature pages should not be included in the proposals. Pages are to be scanned and forwarded by e-mail to each of the following addresses: (mary@bard-isus.com) and Catherine.wright-steele@tda.state.tx.us.

No additions or amendments to the proposal will be accepted after 5:00 p.m. on September 6, 2007.

Eligibility. Grant proposals, submitted jointly by at least one scientist in Texas and one in Israel, will be accepted from public or private non-profit research institutions. This includes institutions of higher education and governmental research entities.

Funding Areas.

All proposals must meet at least one topical area of the five listed below that has been identified jointly by the TIE and BARD Boards: 1. Efficient use and management of soil and water for agriculture 2. Post harvest food technologies - quality, safety and security, transportability and shelf life extension 3. Horticulture (excluding floriculture), field and garden crops - including drought tolerance 4. Mariculture 5. Renewable energy and agricultural biofuels

Proposal Requirements. Proposals may be prepared and submitted as one to three year projects. Consecutive second and third years of funding of the initially awarded projects will be contingent upon an annual joint review and approval by TIE Board and BARD, of documentation of the achieved objectives through the timely submission of semi-annual, annual and final scientific reports, adherence to grant guidelines which include quarterly fiscal reports for the Texas institutions and annual fiscal reporting for the Israeli institutions, as well as upon the availability of funds.

Funding Limitations.

Each project is limited to a maximum award of $100,000 ($50,000 from TIE and $50,000 from BARD) per year, not to exceed duration of three years and a maximum amount of $300,000 ($150,000 from TIE and $150,000 from BARD) for the three-year period. The match requirement by the institution in Texas might double the matching funding by BARD of the Israeli collaborating institution. Thus fully funded and matched projects might amount to a maximum budget of $600,000 for a three-year project ($150,000 from TIE, $150,000 from the awarded Texan institution and $300,000 from BARD).

Grants are awarded for a one-year period of time with any subsequent funding for multi-year projects contingent upon documentation of achieved objectives and adherence to grant guidelines, reporting requirements and the availability of funds.

Grant projects are limited to one year of funding at any one time; however, a no-cost extension may be requested if properly justified in writing 30 days prior to the termination of a project or the funding period. If approved, the extension shall not exceed one year past the original termination date.

General Format Requirements:

The proposals should be prepared in English.

The line spacing must be not less than 1.5.

Font size must be at least 12.

The margins should be 2.5 cm (1 inch) all around.

Each page must be numbered.

Staple the proposal once only in the upper left corner. Do not bind.

Photocopies must be legible and of high quality.

Technical Requirements.

Include the following items, with these headings:

1. Cover Pages in the format provided in BARD's and TDA websites and in these guidelines from the BARD www.bard-isus.com and the TDA website www.tda.state.tx.us.

2. Table of Contents - include page numbers and section headings.

3. Abstract - do not exceed one page. Abstracts will be used by TDA-TIE/BARD throughout the review process and are the reviewer's initial contact with the proposal. Care should be taken in its prepara-

tion. The abstract page should immediately follow the table of contents. Adhere to general format requirements regarding font size, spacing, etc. Include the title of the proposal and names of the Principal Investigators of Texas and Israel and all collaborating investigators, if any, followed by a summary, not exceeding one page. Clearly state the research problem, objectives, proposed methodology, expected contribution to agriculture and potential for commercialization.

4. List and give full names of Acronyms/Abbreviations used in the proposal.

5. Detailed Description of the Research Plan. Limitation of 15 pages. Length and general format requirements (above) are rigidly enforced. Include the following items in the detailed plan:

Statement of the research problem and its general background.

Concise outline of specific, feasible research objectives.

Hypotheses and their rationale.

Preliminary results (particularly important in highly innovative proposals).

Research Plan: strategies, procedures and methodologies used in addressing the questions asked.

List specific experimental designs and a discussion of their potential pitfalls and possible alternatives.

Description of the expected results and their anticipated contributions to the agriculture of Texas and Israel.

Tables, figures, etc. are counted in the section above (15 page limit).

Detail the commercial applicability of the research results, including information on, and contact information for, private interests in the research and the potential of eventual development of public-private partnerships is required but will not be included in the 15 page limit.

6. Timetable of the Work Plan - describe the division of the research tasks between the participants in Texas and Israel for each year of the project. A graphic or tabular presentation is recommended.

7. Details of Cooperation - The proposal, prepared jointly by all investigators, should clearly indicate the anticipated cooperative endeavors between the partners, including the work to be done in each location and the responsibility of each collaborator. Explain how the cooperating scientists contribute their expertise to the joint research and whether joint experiments and or publications are planned. The level and quality of the cooperation will be scored by reviewers and panels in their evaluation of the proposal. Types of cooperation are defined below. The highest value is given to synergistic cooperation and lowest value to supportive cooperation:

Synergistic: Each scientist contributes a specific expertise, facility, or equipment that the other partner cannot contribute and without which the final expectations of hypothesis testing could not be achieved.

Complementary: Each scientist performs essentially the same research using different (biological) systems or methods, thus, widening the scope and strengthening the validity of the results.

Supportive: Collaborators with essentially the same expertise divide the research tasks between the laboratories.

8. Facilities - briefly detail the facilities to be dedicated to the project.

9. Relevant Bibliography - Include all authors, full title, date, journal name, volume and page numbers. For references in the text to citations, use author(s) names not number in the list.

10. Curriculum Vitae

Do not exceed two pages for each investigator.

Provide a *brief* professional biography and academic background.

List previous research experience.

List recent, relevant publications.

List other achievements, including new inventions and patents.

11. Addenda to the proposal:

Cited ***in press*** *articles in* ***reviewed*** *journals should be attached to the hard copies. Journal name (and where possible, volume number) must be specified. In addition, pdf copies should be sent by e-mail. Relevant articles that reach* ***in press*** *status after the submission date should be sent by e-mail to BARD for incorporation into the review process (mary@bard-isus.com).*

General letters of support are not allowed. Only letters specifically confirming additional materials, facilities, know-how, etc. may be included.

No other attachments are allowed.

12. Details of the Budget

A. Eligible Expenses. Generally expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible.

Expenses must be properly documented with sufficient backup detail, including copies of invoices. Examples of eligible expenditures are:

Personnel costs - both salary and benefits

Travel - both foreign and domestic

Equipment - nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Supplies and direct operating expenses - equipment that costs less than $5,000 per unit, research and office supplies, postage, telecommunications, printing, etc.

Indirect/overhead costs - limited as described below.

B. Ineligible Expenses. Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

Alcoholic beverages

Entertainment

Contributions, charitable or political

Expenses falling outside of the contract period

Expenses for expenditures not listed in the project budget

Expenses that are not adequately documented

C. Budget Summary Table: Use the format on the website. Present separate figures for each participating institution. Use additional columns (tables) as necessary. Round annual totals to the nearest $1,000. Round individual budget items to the nearest $100.

D. Description of the Budget - Present an overall project budget, as well as a separate budget for each institution and year of the grant period. No increases in budget based on expected inflation during the course of the grant will be considered. Take into account anticipated inflationary changes in costs when preparing the budget for subsequent years of research.

E. Include the following items in the *Israel* budget description:

1. Personnel services: List both PI's by name. Individuals who receive their salary from sources other than research grants (soft money) are not entitled to receive any fraction of the grant as salary. Requests for part or full salaries of PI's require prior approval by BARD. Specify the percentage of time devoted to the project by each person. List support personnel or their role in the project. Support personnel can receive salaries and social/fringe benefits in proportion to the time devoted to the research project.

2. Non-expendable equipment: Defined as tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. BARD will allow the purchase of unique, specific items of equipment to be used in the supported research and without which the research project cannot be conducted. Large capital expenditures are not included in TDA-TIE/BARD's obligations to recipients.

3. Operating expenses: Present operating expenses in general terms, together with a list of estimated costs. Include in-country travel, computer services and supplies.

4. Foreign travel (see note in G, below): TDA-TIE/BARD allows **one** trip from Israel to Texas for a multi-year project. Per diem is allowed in accordance with the terms prevailing in the investigator's institution.

5. Overhead expenses: may not exceed 20% of total direct costs.

F. Include the following items in the *Texas* budget description:

1. Personnel services: List both PI's by name. Individuals who receive their salary from sources other than research grants (soft money) are not entitled to receive any fraction of the grant as salary. Requests for part or full salaries of PI's require prior approval by TDA. Specify the percentage of time devoted to the project by each person. List support personnel or their role in the project. Support personnel can receive salaries and social/fringe benefits in proportion to the time devoted to the research project.

2. Professional/Contractual: Any contract or agreement entered into by a grantee that obligates grant funds must be in writing and consistent with Texas contract law. Grantees must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.

3. Travel (see note in G, below): Grant funds used for travel expenses, both foreign and domestic, must be limited to the grantee agency's established mileage, per diem, and lodging policies. If a grantee does not have established mileage, per diem, and lodging policies, then the grantee must use state travel guidelines.

4. Equipment: Defined as tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Applicants must submit with their grant applications a list of all proposed equipment purchases for approval. Grantees must request any additional equipment purchases through grant adjustments. Grantees are not authorized to purchase any equipment until they have received written approval to do so from TDA through the original grant award or a subsequent grant adjustment notice. TDA may refuse any request for equipment. Decisions regarding equipment purchases are made based on whether or not the grantee has demonstrated that the requested equipment is necessary, essential to the successful operation of the grant project, and reasonable in cost.

5. Supplies and Direct Operating Expenses: Expenses that are directly related to the grantee's day-to-day operation of the grant project that are not included in any of the Grantee's other standard budget categories and has an acquisition cost of less than $5,000 per unit. Grantees must allocate costs on a prorated basis for shared usage, including research and office supplies, postage, telecommunications, and printing.

6. Indirect Costs: May not exceed 10% of total direct costs.

G. Funding Match Requirement (*Texas Only*)

The Texas portion of the TDA-TIE/BARD grant program has a 100 percent matching requirement from other funding sources. For example: if the Texas portion of the request is $50,000, then the matching funds must equal $50,000. This pertains **only** to the TDA-TIE portion. The matching funds must be documented on the budget submission form as well as on the quarterly budget reports regarding how much has been expended from the other sources. All matching funds must comply with the same rules and guidelines that apply to the grant award with the exception of matching indirect costs. Up to 20 percent of indirect costs may be charged to the matching portion of the project budget. If the applicant does not demonstrate an adequate match to meet the requirement, the TDA-TIE portion of the funding request will be decreased to compensate.

Note: International Travel: TDA/BARD will organize two "status seminars," once in Texas during the second year of the three year projects and once in Israel toward the end of the third year. In these meetings PI/CoPI of awarded projects will summarize their progress and results. The budget allocated for foreign travel must be assigned for the purpose of participation in the status seminars.

Regulatory Agency Requirements

Proposals and grants must adhere to policies and regulations as established by the regulatory agencies of the country in which the research is to be conducted. ***Exchange of GMO materials, exotic species and some biological materials between countries may require special authorization and must note delay the project.*** **The signature of the Authorized Officer of the Research Authority indicates to TDA-TIE/BARD that these concerns have been met. PI/CoPI of funded projects will be asked to present to BARD and TDA the required authorizations prior to the initiation of funding.**

Evaluation of Proposals

One or more disciplinary panels will evaluate TDA-TIE/BARD proposals simultaneously and independently by parallel panels in Texas and Israel. Panel members (2-6 per panel) are scientists competent in the relevant area of research. Panel members will participate in the identification of outside reviewers to evaluate each proposal. The ad-hoc reviews assist the panels to formulate their recommendations regarding the proposal. Panel members rank and prioritize all proposals in their panel and prepare a brief written assessment (strengths/weaknesses) of each proposal.

The proposals will be evaluated on the following elements:

The scientific and technological merit of the proposal.

Does the proposed project meet the applied research requirement with expected commercial applicability of results within 3 years of the project's initiation?

The feasibility of the objectives.

The potential for commercialization and anticipated benefits to agriculture and the environment in Texas and Israel.

The quality of the cooperation between the investigators.

The suitability of the investigators and their facilities.

The requested budget in relation to the research plan.

The recommendations of both panels in Texas and Israel will then be forwarded to a TDA-TIE/BARD Joint Advisory Committee for further discussion and recommendations to the respective TIE and BARD Boards.

Award Information and Notification

The TIE and BARD Boards will make all final funding decisions. The TIE and BARD Boards reserve the right to accept or reject any or all proposals submitted. Neither the TIE Board, nor BARD Board is under a legal or other obligation to execute a grant on the basis of this RFP. Neither the TIE Board, nor BARD Board shall pay for any costs incurred by any entity in responding to this RFP.

The public announcements and written notifications will be made to all applicants and their affiliated research institution. Favorable decisions will indicate the amount of award, duration of the grant and any special conditions associated with the project.

General Compliance Information

1. Any delegation by the Grantee to its counterpart or any subcontractor regarding any duties and responsibilities imposed by grant award shall not relieve the Grantee of its responsibilities to the TIE and BARD Boards for the performance thereof.

2. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature and BARD Board of Directors.

3. While TDA-TIE/BARD attempts to observe the strictest confidence in handling the research proposals, neither can guarantee complete confidentiality on any matters that lie beyond its control. The confidentiality of recipient's "proprietary data" so designated shall be strictly observed to the extent permitted by appropriate Texas and Israeli laws, including the Texas Public Information Act. There shall be no restriction on the publication of research results except when taking into consideration effects of prior publication on possible subsequent patent and TDA-TIE/BARD's license to use copyrighted material.

4. Awarded grant projects must remain in full compliance or be subject to termination.

Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the research project. Keep records for three years after the completion of the research project or as otherwise agreed upon with TDA-TIE/BARD. TDA/TIE/BARD, and the Texas State Auditor's Office reserves the right to examine all books, documents, records and accounts relating to the research project at any time throughout the duration of the agreement and for three years immediately thereafter. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA/TIE/BARD and the Texas State Auditor's Office also reserves the right to inspect the research locations and to obtain from the research team full information regarding all project activities.

5. In any year in which a financial audit is conducted, a copy must be submitted to both the TIE and BARD Boards, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

6. In accordance with Texas Government Code Ann. §783.007, grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). Upon grant award, Grantees will be provided a copy or it may be downloaded from the following website: http://www.governor.state.tx.us/divisions/state-grant s/guidelines/.

7. Grant management guidelines for the TDA-TIE/BARD grants will be published under separate cover.

For any questions:

Texas institutions please contact Ms. Catherine Wright Steele at (512) 463-7700 or by email at Catherine.wright-steele@tda.state.tx.us. Israeli institutions please contact Dr. Edo Chalutz at (972)-3-965-2244 or by email at echalutz@bard-isus.com.

TRD-200702825
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: July 3, 2007

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 22, 2007, through June 28, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on July 4, 2007. The public comment period for this project will close at 5:00 p.m. on August 3, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Professional Estates Home Owners Association; Location: The project is located in Resaca del Rancho Viejo, at the downstream boundary of the Professional Estate Subdivision, east of the intersection of Stillman Road and U.S. Highway 77, Brownsville, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: West Brownsville, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 648750; Northing: 2874700. Project Description: The proposed project consists of the placement of approximately 240 cubic yards of fill material for the purpose of constructing an earthen berm intended to impound resaca flows and therefore maintain a consistent water level within the Professional Estate Subdivision. The earthen berm includes three 12-inch culverts at the top of the berm for the purpose of relieving high flows. Approximately 0.14 acres of resaca bottom will be displaced by the proposed berm. The open water area upstream of the berm within the Professional Estates Subdivision is approximately seven acres, and thence an additional 4.75 acres upstream to US Highway 77. CCC Project No.: 07-0217-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-198 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Lamar Oil and Gas, Inc.; Location: The project is located approximately 6.25 miles WSW of the Copano Bay Causeway in Copano Bay, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: ROCKPORT, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 685,018; Northing: 3,110,866. Project Description: The applicant proposes to install, operate, and maintain structures and equipment neces-

sary for oil and gas drilling, production, and transportation activities at the proposed well site ST 62 #1. Approximately 4,500 cubic yards of shell, crushed rock or washed gravel will be used as a base for the proposed drilling rig and facility. In addition, a 9,787-foot 2.5-inch O.D. pipeline is proposed to connect the structure with an existing platform at well site ST 81 #2. The pipeline will be jetted or plowed a minimum distance of 3 feet below the bay bottom. Approximately 2,175 cubic yards of material are expected to be displaced during pipeline installation activity and the trench is expected to fill in naturally. CCC Project No.: 07-0218-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-900 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Lamar Oil and Gas, Inc.; Location: The project is located approximately 6.4 miles WSW of the Copano Bay Causeway in Copano Bay, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: BAYSIDE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 683,826; Northing: 3,109,880. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities at the proposed well site ST 80 #1. Approximately 4,500 cubic yards of shell, crushed rock or washed gravel will be used as a base for the proposed drilling rig and facility. In addition, a 3,944-foot 2.5-inch O.D. pipeline is proposed to connect the structure with an existing platform at well site ST 81 #2. The pipeline will be jetted or plowed a minimum distance of 3 feet below the bay bottom. Approximately 876 cubic yards of material are expected to be displaced during pipeline installation activity and the trench is expected to fill in naturally. CCC Project No.: 07-0219-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-902 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Lamar Oil and Gas, Inc.; Location: The project is located approximately 5.8 miles WSW of the Copano Bay Causeway in Copano Bay, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: ROCKPORT, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 684,694; Northing: 3,109,362. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities at the proposed well site ST 79 #1. Approximately 4,500 cubic yards of shell, crushed rock or washed gravel will be used as a base for the proposed drilling rig and facility. In addition, a 5,667-foot 2.5-inch O.D. pipeline is proposed to connect the structure with an existing platform at well site ST 81 #2. The pipeline will be jetted or plowed a minimum distance of 3 feet below the bay bottom. Approximately 1,260 cubic yards of material are expected to be displaced during pipeline installation activity and the trench is expected to fill in naturally. CCC Project No.: 07-0220-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-904 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Lamar Oil and Gas, Inc.; Location: The project is located approximately 4.8 miles west of the Copano Bay Causeway in Copano Bay, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: ROCKPORT, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 686,283; Northing: 3,111,360. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities at the proposed well site ST 64 #1. Approximately 4,500 cubic yards of shell, crushed rock or washed gravel will be used as a base for the proposed drilling rig and facility. In addition, a 16,537-foot 2.5-inch O.D. pipeline is proposed to connect the structure with an existing platform at well site ST 81 #2. The pipeline will be jetted or plowed a minimum distance of 3 feet below the bay bottom. Approximately 3,675 cubic yards of material are expected to be displaced during pipeline installation activity and the trench is expected to fill in naturally. Oyster reefs will be protected by turbidity curtains. CCC Project No.: 07-0221-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-906 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: BEPCO, LP; Location: The project is a well pad expansion and directional bore for two pipelines. The proposed entry point for the pipeline bore is located on the U.S.G.S. quadrangle map entitled: Gregory, Texas at approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 664050; Northing: 3084836. The proposed exit point for the pipeline bore and the location of the well pad expansion is located on the U.S.G.S. quadrangle map entitled: Portland, Texas at approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 664518; Northing: 3084272. Project Description: The applicant proposes to expand the size of an existing well pad, owned by the City of Portland, TX, and directionally bore two pipelines in the northern portion of Corpus Christi Bay. The well pad expansion is to accommodate various well drilling and production equipment, offices, personnel quarters, and computer equipment, and involves the placement of approximately 3,310 cubic yards of fill material in 1.37 acres of jurisdictional area. The dimensions of the expanded well pad would be 368- by 275-feet. The applicant also proposes to directionally bore two pipelines, a 4.5- and a 2.5-inch-diameter pipeline for a distance of approximately 2,400 linear feet from an upland location to the expanded well pad location. To compensate for the fill in jurisdictional area, the applicant proposes to construct a mitigation area on the southern portion of Sunset Lake, near the Indian Point State Fishing Pier wherein they would plant approximately 1.38 acres of wetland vegetation consisting of 1.085 acres of smooth cordgrass (Spartina alterniflora) and 0.294 acres of various high marsh species. The mitigation plan has a five-year monitoring component and is expected to have a secondary benefit of protecting approximately 180 acres of estuarine wetlands that, according to aerial photography, have experienced considerable erosion over the last half-century. The applicant would also construct and maintain for two years, approximately 1,440 linear feet of double wave barrier fencing to help ensure the planted area has ample opportunity to fully colonize and thrive. CCC Project No.: 07-0222-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-538 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Golden Pass LNG Terminal, LLC; Location: The proposed Golden Pass (GP) Pipeline System starts at the GP Liquefied Natural Gas (LNG) Terminal site, located 10 miles south of Port Arthur and 2 miles northwest of Sabine Pass, in Jefferson County, Texas. The approximate UTM coordinates in NAD 27 (meters) for the start point (Milepost (MP) 0.00) are: Zone 15; Easting: 4114477; Northing:

3292156. The proposed GP Pipeline System ends at a metering station at an interconnection with an existing Transcontinental Gas Pipeline Corporation (Transco) interstate pipeline near Starks, Louisiana. The coordinates for the GP Pipeline terminus (MP 69.12) in UTM NAD 27 (meters) are: Zone 15: Easting: 441894; Northing: 3358456. Project Description: Applicant is requesting to amend the Department of the Army Permit No. 23620 to account for pipeline route and design optimization variations that have occurred since the Record of Decision was signed on August 17, 2005. Applicant is proposing to increase the diameter of the proposed GP Pipeline from 36 inches to 42 inches and incorporate several design variations. The longest of these variations would replace a segment of 20.83 miles of two parallel 36-inch diameter pipelines with an 11.88-mile segment consisting of one 42-inch diameter pipeline. This design variation, referred to hereafter as the Optimized Variation (OV), would reduce the length of the GP Pipeline by 8.95 miles. The remaining route variations are described below. In addition, modifications to the construction Right-of-Way (ROW), extra workspaces, and access roads were required to accommodate the change in the diameter of the pipeline and the incorporation of the OV. The amended GP Pipeline System will consist of three pipelines (69.12-mile GP Pipeline, 1.81-mile Beaumont Lateral, and 1.30-mile FGT Lateral) and associated pipeline support facilities, including pig launchers and receivers, mainline block valves, and aboveground facilities. Changes to the proposed GP Pipeline system include the following:

1) The 11.88 mile OV re-route (described above) resulting in a net reduction of 8.95 miles to the GP Pipeline.

2) One (1) new pipe yard is currently proposed at Interstate Highway 10 and FM 1442, just west of Orange, Texas.

3) Six (6) previously identified access roads have been removed from the pipeline system,

4) Sixteen (16) new access roads along the OV are proposed.

5) Mileposts 29.20 to 30.88: 1.68 mile route variation located southeast of the City of Beaumont, Texas, directly west and east of where the proposed pipeline crosses the Neches River.

6) Mileposts 28.60 to 29.20: 0.69 mile route variation near the Highway 347 and U.S. Highway 69 crossing.

7) Mileposts 55.60 to 57.50: 1.91 mile route variation in the area of the Sabine Island Wildlife Management Area (WMA).

8) Relocation of Florida Gas Interconnect meter station and the addition of the 1.3-mile Florida Gas Transmission (FGT) Lateral located near the intersection of FM 1135 and Duncan Woods Road.

9) Mileposts 68.42 to 69.12: Relocation of Transco Interconnect at north end of the proposed project and the re-route of the last 0.61 miles of the proposed 42" pipeline.

10) Mileposts 0.55 to 9.55: Construction methodology and route changes through Keith Lake, Shell Lake and the J. D. Murphree WMA and 3.2 acres of extra work space will be added to build a pipe push station west of Highway 87. In addition, the 42" line will be moved north approximately 175 feet east of Highway 87 to get the ROW on GPPL property.

11) Mileposts 40.40 to 41.20: Change crossing method of I-10 from bore to HDD.

12) Mileposts 1.10 to 1.30: KM-NGPL Interconnect relocation located east of Highway 87.

13) Milepost 64: Tennessee Interconnect relocation located approximately 1.65 miles south of Bigwood Stark Road.

14) Milepost 20.08: KM-Tejas interconnect plan dimension increase and orientation change located at the southwest corner of the proposed 42" pipeline crossing of FM 365.

15) Milepost 66.45: Texas Eastern Interconnect: Texas Eastern Interconnect plan dimension increase located approximately 0.42 miles north of Bigwood Stark Road.

16) Milepost 23.64: KM-Texas Interconnect plan dimension increase located at the southeast corner of the intersection of Hebert and Knauth Roads.

17) Mileposts 31.80 to 32.62: Approximately 0.82-mile re-route to minimize impacts to archeological sites 41OR89 and 41OR85 located approximately 1.73 miles southwest of Church House Road.

18) Mileposts 45.10 to 45.60: Change crossing method of Highway 62, Pacific Railroad, and canal from bore to HDD.

19) Mileposts 19.37 to 19.85: Approximately 0.48-mile re-route of proposed 42" pipeline to avoid existing gravel pit located approximately 0.62 miles north of Taylor Bayou.

In addition to the pipeline route variations listed above, five (5) structures will be constructed at strategic locations along selected waterways. These structures will facilitate the loading/unloading of pipeline construction equipment, materials and personnel onto shallow-water marine vessels for transportation. The proposed locations of these structures are listed below:

1) One (1) structure will be located in Sabine Pass, Texas, on the western side of the proposed 42" pipeline crossing of Highway 87 near milepost 1.22. 7,500 cubic yards of fill material will be required at this location. Fill will consist of granular material.

2) Two (2) structures will be located off the Gulf Intracoastal Waterway (GIWW). The first structure will be located on the southern side of the proposed 42" pipeline crossing of the GIWW near milepost 8.80. The second structure will be located on the southeastern portion of the J. D. Murphree WMA bordering the GIWW near milepost 9.30. It is anticipated that approximately 2,000 cubic yards of dredge material will be generated during the construction of each of these structures. Dredge material from these areas will be transported to a licensed County Landfill.

Two (2) structures will be constructed in Indian Bayou near the Texas/Louisiana border near mileposts 57.00 and 57.40. It is anticipated that approximately 1,000 cubic yards of dredge material will be generated during the construction of each of these structures. Dredging of Indian Bayou is also warranted to provide navigable water levels and widths for barges and other vessels transporting pipeline construction equipment and personnel. It is anticipated that approximately 36,300 cubic yards of dredge material will be generated during the dredging of Indian Bayou and the installation of the temporary structures along its banks. All dredge material from Indian Bayou will be disposed of at a licensed County/Parish landfill. Changes proposed to the currently permitted pipeline route have resulted in a decrease of permanent wetland impacts by 10.59 acres (from 83.23 acres to 72.64). The original authorization outlines wetland mitigation in the form of the preservation of an 829-acre tract of land adjacent to the Big Thicket National Preserve and the purchase of 50 acres of pine wetlands from the TNC Southwest Louisiana Pine Wetland Mitigation Bank. Although there is a decrease in permanent wetland impacts as a result of the project changes, the applicant has agreed to construct the mitigation as proposed in the original authorization. CCC Project No.: 07-0225-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-617 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this

project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200702812
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: July 2, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/02/07 - 07/08/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/02/07 - 07/08/07 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200702798
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 2, 2007

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/09/07 - 07/15/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/09/07 - 07/15/07 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 07/01/07 - 07/31/07 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 07/01/07 - 07/31/07 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200702820
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 3, 2007

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Texas Education Agency

Request for Applications Concerning the Texas Science, Technology, Engineering, and Math (T-STEM) Pre-Service Teacher Preparation Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-07-118 from eligible partnerships for the Texas Science, Technology, Engineering, and Math (T-STEM) Pre-Service Teacher Preparation Program. An eligible partnership shall include (1) an engineering, mathematics, or science department of an institution of higher education (IHE); and (2) a high-need local educational agency (LEA). A high-need LEA is defined as a public school district or open-enrollment charter school at which a minimum of 39 percent of students participate in the free or reduced-price lunch program. Applicant partnerships shall identify up to four IHEs in Texas to serve as replication sites and up to four high-need LEAs corresponding to each site. Each LEA and campus included in a shared services arrangement must be high need according to the criteria listed for a high-need LEA. The fiscal agent (i.e., applicant) must be the IHE on behalf of the mathematics, science, or engineering department.

Description. The purpose of this program is to award a single grant to create and support up to four mathematics and science teacher preparation programs across the state by replicating a model program that has a successful track record of increasing the number of highly qualified mathematics and science teachers. The goals of this program are (1) to develop up to four high-quality teacher preparation programs in the state that effectively integrate in a four-year program a rigorous mathematics and/or science major, research experience, acquisition of effective teaching techniques, field experience, and teacher certification; and (2) to increase the number of mathematics and science teachers in high-need areas of the state that have both a thorough understanding of high school level mathematics and science content as well as a knowledge of curriculum development and instructional strategies. The applicant selected must have the capacity and resources to begin and implement the program at all four sites.

Dates of Project. The T-STEM Pre-service Teacher Preparation Program will be implemented during the 2007-2008 and 2008-2009 school years for up to four sites across the state. Applicants should plan for a starting date of no earlier than October 1, 2007, and an ending date of no later than August 31, 2009.

Project Amount. A total of approximately $1.7 million is available for funding the T-STEM Pre-service Teacher Preparation Program. One project will be selected to receive a maximum of $800,000 for the 2007-2008 school year and $900,000 for the 2008-2009 school year. This project is funded 100 percent from Title II, Part B federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The

TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-07-118 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by emailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms/ for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Karen Harmon, Division of Discretionary Grants, TEA, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms/.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, September 11, 2007, to be considered for funding.

TRD-200702819
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 3, 2007

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 13, 2007.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 13, 2007.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Dang Cong Huynh dba B & G Food Store; DOCKET NUMBER: 2007-0040-PST-E; IDENTIFIER: RN101643716; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: property with underground storage tank (UST); RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.47(a)(2), by failing to permanently remove from service an existing UST system; 30 TAC §334.54(b), by failing to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §337.7(d)(3), by failing to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition; PENALTY: $9,350; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: B & Z LLC dba B & B Mini Mart; DOCKET NUMBER: 2007-0695-PST-E; IDENTIFIER: RN101741957; LOCATION: Groves, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and Texas Health & Safety Code (THSC), §382.085(b), by failing to maintain Stage II records on site; PENALTY: $1,020; ENFORCEMENT COORDINATOR: Chris Holcomb, (512) 239-2541; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Gulf Coast Machine & Supply Company dba Gulfco; DOCKET NUMBER: 2007-0616-IWD-E; IDENTIFIER: RN101517779; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: forging and industrial machine shop; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0001203000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: $9,100; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2007-0343-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a) and (c)(7), Flexible Permit Number 16989 and PSD-TX-794, Special Conditions 1 and 27, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $37,800; Supplemental Environmental Project (SEP) offset amount of $18,900 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Madisonville; DOCKET NUMBER: 2007-0638-MWD-E; IDENTIFIER: RN101719821; LOCATION:

Madison County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(9)(A) and TPDES Permit Number 10215001, Monitoring and Reporting Requirements Number 7, by failing to orally notify the TCEQ of an unauthorized discharge; and the Code, §26.121(a) and TPDES Permit Number 10215001, Permit Conditions 2(g), by failing to prevent the unauthorized discharge of wastewater; PENALTY: $4,050; Supplemental Environmental Project (SEP) offset amount of $3,240 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: MeadWestvaco Texas, L.P.; DOCKET NUMBER: 2007-0332-IWD-E; IDENTIFIER: RN102157609; LOCATION: Evadale, Jasper County, Texas; TYPE OF FACILITY: pulp and paper mill; RULE VIOLATED: 30 TAC §305.125(1), Permit Number WQ0000493000, Effluent Limitations and Monitoring Requirements, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: $12,525; Supplemental Environmental Project (SEP) offset amount of $5,010 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Poly-America GP, LLC; DOCKET NUMBER: 2007-0595-IHW-E; IDENTIFIER: RN100641752; LOCATION: Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: plastics manufacturing; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the transportation of industrial waste to an unauthorized facility; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: PSC Recovery Systems, Inc.; DOCKET NUMBER: 2007-0455-IHW-E; IDENTIFIER: RN100785195; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: wastewater/liquids pretreatment; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the receipt and processing of an unauthorized F-listed hazardous waste; and 30 TAC §205.6 and the Code, §5.702, by failing to pay fees for general permits storm water; PENALTY: $1,020; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Rockdale; DOCKET NUMBER: 2007-0353-MWD-E; IDENTIFIER: RN101388288; LOCATION: Milam County, Texas; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(4) and (5), TPDES Permit Number WQ0010658001, Permit Conditions Number 2.d., and the Code, §26.121(a), by failing to prevent the unauthorized discharge and accumulation of sludge in the receiving stream; PENALTY: $7,100; Supplemental Environmental Project (SEP) offset amount of $7,100 applied to having the respondent hold a one-day city-wide used tire collection clean up event and shall recycle reusable tires; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2007-0514-MWD-E; IDENTIFIER: RN102314069; LOCATION: Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10829001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with ammonia-nitrogen permitted effluent limitations; and 30 TAC §305.125(17) and TPDES Permit Number 10829001, Monitoring and Reporting Requirements Number 1, by failing to report daily average and daily maximum flow; PENALTY: $2,970; Supplemental Environmental Project (SEP) offset amount of $2,376 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200702791
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 2, 2007

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 13, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 13, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Azman Incorporated dba Shoppers Mart 1; DOCKET NUMBER: 2004-1286-PST-E; TCEQ ID NUMBER: RN102795689; LOCATION: 5032 Pinemont Drive, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 Texas Administrative Code (TAC) §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking correction action and for compensating third

parties for bodily injury and property damage caused by accidental releases arising from the operations of petroleum underground storage tanks; and by failing to make timely penalty payments by violating Commission Order Docket Number 2002-0522-PST-E; PENALTY: $3,930; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Benavides Custom Homes, LLC; DOCKET NUMBER: 2006-0427-WQ-E; TCEQ ID NUMBER: RN104014964; LOCATION: near Del Rio Highway 277 and Veterans Boulevard, Eagle Pass, Maverick County, Texas; TYPE OF FACILITY: construction site for custom homes; RULES VIOLATED: 30 TAC §281.25(a)(4); 40 Code of Federal Regulations (CFR) §122.26(a); and Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR150000 Part II, Section D3(d), by failing to post a copy of the Notice of Intent at the Site in a location where it is readily available for viewing; 30 TAC §281.25(a)(4); 40 CFR §122.26(a); and TPDES General Permit No. TXR150000 Part II, Section D2(c), by failing to post a signed copy of the construction site notice at the Site in a location where it is readily available for viewing; 30 TAC §281.25(a)(4); 40 CFR §122.26(a); and TPDES General Permit No. TXR150000 Part III, Section D1, by failing to have the Storm Water Pollution Prevention Plan readily available at the time of an on-site inspection; and 30 TAC §205.6 and Texas Water Code (TWC), §5.702, by failing to pay General Permit Storm Water fees for fiscal years 2005 and 2006, for TCEQ Financial Administration Account No. 20006737; PENALTY: $3,150; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(3) COMPANY: Dennis A. Holmes; DOCKET NUMBER: 2006-0265-WTR-E; TCEQ ID NUMBER: RN103372447; LOCATION: 4525 Brookside Drive, Vidor, Hardin County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.381(b), and Texas Health and Safety Code (THSC), §341.034(a), by operating the facility on a contract basis without an adequate license or registration issued by the commission; PENALTY: $313; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: G.Q. Enterprises Corporation dba Glenview Quick Mart; DOCKET NUMBER: 2005-1959-PST-E; TCEQ ID NUMBER: RN103000592; LOCATION: 8015 Glenview Drive, North Richland Hills, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding fees for TCEQ Account No. 0063833U for fiscal year 2006; PENALTY: $1,050; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: James R. Coleman dba Coleman Cleaners; DOCKET NUMBER: 2006-1446-DCL-E; TCEQ ID NUMBER: RN103952735; LOCATION: 2406 South Beckley Avenue, Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102; by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Mannesmann DMV Stainless USA, Inc. fka DMV Stainless USA, Inc.; DOCKET NUMBER: 2006-1577-AIR-E; TCEQ ID NUMBER: RN100210962; LOCATION: 12050 West Little York Road, Houston, Harris County, Texas; TYPE OF FACILITY: stainless tubing and piping production plant; RULES VIOLATED: 30 TAC §122.146(2); Federal Operating Permit No. O-01340, General Terms and Conditions; and THSC, §382.085(b), by failing to submit a complete annual compliance certification for Federal Operating Permit No. O-01340 in a timely manner; PENALTY: $3,225; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Maria E. Warren dba Peppers Pit Stop; DOCKET NUMBER: 2004-0515-PST-E; TCEQ ID NUMBER: RN101435410; LOCATION: northwest corner of Highway 175 and Highway 59, Montague, Montague County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4) and §334.49(c)(2)(C), and TWC, §26.3475; by failing to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years and by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor for releases from the facility(s UST system at least once per month (not to exceed 35 days between each monitoring), by using one or more of the release detection methods; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point near the fill tube that corresponds to the UST identification number listed on the registration and self-certification form; 30 TAC §334.50(d)(1)(B)(ii) and §334.48(c), by failing to conduct effective inventory control procedures for all UST systems at a retail service station; and 30 TAC §334.22(a) and (b), by failing to pay a late fee of $7.50 for UST annual facility fee, TCEQ Financial Administration (FA) Account No. 0058667U; PENALTY: $19,000; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: Mario Ramos and Olga Ramos; DOCKET NUMBER: 2006-0377-OSS-E; TCEQ ID NUMBER: RN104298245; LOCATION: 508 East Carolyn Street, Hebbronville, Jim Hogg County, Texas; TYPE OF FACILITY: on-site sewage facility; RULES VIOLATED: 30 TAC §285.70 and THSC, §366.017(b), by failing to repair the malfunctioning facility; PENALTY: $688; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Meldimaa Enterprise, Inc. dba Silverline Dry Cleaners; DOCKET NUMBER: 2006-1132-DCL-E; TCEQ ID NUMBERS: RN103962411, RN104992219, RN104992227, and RN104992243; LOCATION: 2501 Country Road (CR) 89, Suite B, Pearland, (the CR 89 site), and dry cleaner drop stations at 15058 Highway 6, Rosharon, (the Rosharon site), 1801 Country Place Parkway, Pearland, (the Country Place site), and 10228 Broadway Street, Suite 148, (the

Broadway site) Pearland, Brazoria County, Texas; TYPE OF FACILITIES: dry cleaning facility and dry cleaner drop stations; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to register the facilities with the commission; PENALTY: $4,740; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(10) COMPANY: Mohammad Haroon Memon dba Exclusive Cleaners; DOCKET NUMBER: 2006-1295-DCL-E; TCEQ ID NUMBER: RN104990593; LOCATION: 4152 Cole Avenue, Suite 102, Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility(s registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c) and TWC, §5.702, by failing to pay dry cleaner registration fees for TCEQ FA No. 24002297 and associated late fees for Fiscal Years 2004, 2005 and 2006; PENALTY: $1,185; STAFF ATTORNEY: Mary Hammer, Litigation Division MC 175, (512) 239-2496; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200702796
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 2, 2007

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 13, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 13, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Adolfo Tapia; DOCKET NUMBER: 2005-1654-AGR-E; TCEQ ID NUMBER: RN102953007; LOCATION: approximately two miles north of Farm-to-Market Road 1692, Klattenhoff Road, Tom Green County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: 30 Texas Administrative Code (TAC) §§321.36(j)(2) and (3), 321.46(b)(10), 321.46(d)(2), (3), (7), (8)(C) and (8)(G), 305.125(1), General Permit No. TXG920000, Part III.A.16(h), Part IV.A(1)(a), (2)(b)(1)(iii) and (vii), Part IV.A.(2)(b)(2)(ii), Part IV.A.(4), and Part IV.B.(1)(b) and (c), by failing to maintain records of all employee training, including the dates when training occurred; all measurable rainfall events; acreage of each individual crop on which manure, litter, or wastewater is applied; the weather conditions during the land application and 24 hours before and after the land application; the name and address of the recipient of manure; and descriptions of the findings of each inspection conducted and by failing to provide correct information for the total manure, litter, and wastewater generated and land applied to each land management unit (LMU) during the last 12 months on the 2004 annual report form; 30 TAC §305.125(1) and General Permit No. TXG920000, Part IV.B.(2)(b) and Part II.C.8(a), by failing to notify the TCEQ San Angelo Regional Office at least 48 hours prior to a change in the number or configuration of land management units (LMUs) and by failing to submit a Notice of Change letter within 14 days upon becoming aware that relevant facts pertaining the use of additional LMUs had not been included as attachments to the Notice of Intent used to obtain authorization to discharge under General Permit No. TXG920000; 30 TAC §305.125(1) and General Permit No. TXG920000, Part III.A.2(a) and (b), by failing to prepare the site map and land application map in accordance with the requirements of General Permit No. TXG920000; 30 TAC §321.46(a)(6) and §305.125(1) and General Permit No. TXG920000, Part III.A.1.(a)(2) and (3) and 4.(a), (b), (c), and (d) and Part III.A.3, by failing to include in the Pollution Prevention Plan (PPP) a description of all potential pollutant sources, including the types of pollutant sources, and all measures that will be used to prevent contamination from the pollutant sources; 30 TAC §305.125(1), General Permit No. TXG920000, Part III.A.6(f) and A.9(b)(2), by failing to stabilize embankment walls of retention control structure (RCS) No. 2 and protect the liners of RCS Nos. 1 and 2 from animals and trees; 30 TAC §321.31(a) and §305.125(1), General Permit No. TXG920000, Part III.A.11, Texas Water Code (TWC), §26.121(c), by failing to prevent unauthorized discharges of waste by land applying liquid wastewater and solid manure waste to unauthorized sites; 30 TAC §305.125(1) and §321.40(e) and (f) and General Permit No. TXG920000, Part III.A.11(b)(2) and (d)(1), by failing to prevent the land application of waste on saturated ground or during rainfall events and by failing to manage irrigation practices to minimize ponding or puddling or wastewater on the site; PENALTY: $13,104; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(2) COMPANY: Mark A. Mouton; DOCKET NUMBER: 2006-0095-OSI-E; TCEQ ID NUMBER: RN103748133; LOCATION: 13329 Highway 326 North, Kountze, Hardin County, 345 Jones Road, and 6800 North Highway 105, Vidor, Orange County, Texas; TYPE OF FACILITY: on-site sewage facilities (OSSFs); RULES VIOLATED: 30 TAC §285.5(a) and §285.61(4), and Texas Health and Safety Code (THSC), §366.051(c) and §366.053(a), by failing to obtain documentation that the owner or the owner's agent had acquired an Authorization to Construct before beginning the construction of an OSSF and by failing to submit planning materials and a permit application prior to beginning construction, alteration or repair of an OSSF; and 30 TAC §285.5(b)(1) and §285.61(4), and THSC, §366.051(c), by failing to obtain documentation that the owner or the owner's agent had acquired an Authorization to Construct before beginning the construction of an

OSSF; PENALTY: $960; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Solutia Inc.; DOCKET NUMBER: 2005-0166-AIR-E; TCEQ ID NUMBER: RN100238682; LOCATION: Farm-to-Market (FM) Road 2917, approximately 11 miles southeast of Alvin and approximately 8 miles south of the intersection of Texas Highway 35 and FM 2917, Brazoria County, Texas; TYPE OF FACILITY: organic chemical production plant; RULES VIOLATED: 30 TAC §116.115(c); and Air Permit No. 18251, Special Condition No. 4, and THSC, §382.085(b), by failing to comply with permitted emission limits during an emission event on November 17, 2004. Since the emission event was avoidable and not properly reported, Solutia failed to meet the demonstration criteria for an affirmative defense under 30 TAC §101.222; 30 TAC §101.201(a)(1)(B), and THSC, §382.085(b), by failing to report the November 17, 2004 emission event within 24 hours after its discovery; 30 TAC §122.143(4); and Air Permit No. O-01258, Special Terms and Conditions No. 3.A.iii, and THSC, §382.085(b), by failing to maintain records documenting quarterly opacity observations of tank 55T12 and scrubber 55K1, and reported in a deviation report for the period of June 1, 2004 - November 30, 2004 for the NTA unit; 30 TAC §116.115(b); Air Permit No. 2271, General Condition No. 8; and THSC, §382.085(b), by failing to comply with the permitted short-term ammonia emissions limits for scrubber 55K1, and reported in a deviation report for the period of December 1, 2004 - May 31, 2005 for the NTA unit; 30 TAC §116.115(b) and §116.116(a)(1); Air Permit No. 2271, General Condition No. 1; and THSC, §382.085(b), by failing to comply with permit representations relating to annual hexamethylenetetramine production, annual ammonia usage, and annual ammonia production, and reported in a deviation report for the period of June 1, 2004 - November 30, 2004 for the NTA unit; 30 TAC §122.132(e)(2) and THSC, §382.085(b), by failing to include the following emission units in the Title V application: 55S101, 55S102, 55S103 and 55S104; 30 TAC §115.146(2) and THSC, §382.085(b), by failing to maintain records documenting the volatile organic compound concentration of the exhaust gas associated with 57T5 in order to demonstrate proper function of the carbon canister control equipment, and reported in a deviation report for the period of June 1, 2004 - November 30, 2004 for the DPO unit; 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain authorization for the carbon absorption system on wastewater tank 57T5 prior to installation, and reported in a deviation report for the period of June 1, 2004 - November 30, 2004 for the DPO unit; 30 TAC §116.116(a)(1); Air Permit No. 3046, General Condition No. 1; and THSC, §382.085(b), by failing to operate residue strip tank 57T34 on June 12 and 28, 2004 and August 16, 2004 within temperature ranges specified in the permit application, and reported in a deviation report for the period of June 1, 2004 - November 30, 2004 for the DPO unit; 30 TAC §116.116(b)(1)(C); Air Permit No. 3046, General Condition No. 8; and THSC, §382.085(b), by failing to include all gas streams going to vent condenser 57E22 in the emission estimates and permit application which resulted in emissions from vent condenser 57E22 exceeding rolling annual permitted emission limits, and reported in a deviation report for the period of June 1, 2004 - November 30, 2004 for the DPO unit; and 30 TAC §116.115(c); Air Permit No. 18251, Special Condition No. 4; and THSC, §382.085(b), by failing to prevent unauthorized emissions during an October 9, 2005 emission event. Since the emission was avoidable, Solutia failed to meet the demonstration criteria for an affirmative defense under 30 TAC 101.222; PENALTY: $95,490; Supplemental Environmental Project (SEP) offset amount of $47,745 applied to Houston-Galveston Area Emission Reduction Credit Organization (AERCO); STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: Solutia Inc; DOCKET NUMBER: 2006-1599-AIR-E; TCEQ ID NUMBER: RN100238682; LOCATION: FM Road 2917, approximately 11 miles southeast of Alvin and approximately 8 miles south of the intersection of Texas Highway 35 and FM 2917, Brazoria County, Texas; TYPE OF FACILITY: organic chemical production plant; RULES VIOLATED: 30 TAC §116.115(c); Air Permit No. 18251, Special Condition No. 4, and THSC, §382.085(b), by failing to prevent an unauthorized emissions during a January 11, 2004 emissions event. Since the emission was avoidable, Solutia failed to meet the demonstration criteria for an affirmative defense under 30 TAC §101.222; 30 TAC §116.115(c); Air Permit No. 18251, Special Condition No. 4, and THSC, §382.085(b), by failing to prevent an unauthorized emission during an emission event that started on November 2, 2004. Since the emission event was not properly reported, Solutia failed to meet the demonstration criteria for an affirmative defense under 30 TAC §101.222; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to report an emission event within 24 hours after its discovery; 30 TAC §16.115(c), Air Permit No. 18251, Special Condition No. 4, and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emission event that started on November 15, 2004. Since the emission event was avoidable, Solutia failed to meet the demonstration criteria for an affirmative defense under 30 TAC §101.222; 30 TAC §116.115(c); Air Permit No. 18251, Special Condition No. 4, and TSHC, §382.085(b), by failing to prevent unauthorized emissions during an emission event that started on November 1, 2004. Since the emission event was not properly reported, Solutia failed to meet the demonstration criteria for an affirmative defense under 30 TAC §101.222; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to report an emission event within 24 hours after its discovery; 30 TAC §116.115(c); Air Permit No. 18251, Special Condition No. 4; and THSC, §382.085(b), by failing to prevent unauthorized emissions. Since the emission event was not reported within 24 hours of discovery, Solutia failed to meet the demonstration criteria for an affirmative defense under 30 TAC §101.222; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to make initial notification within 24 hours of discovery of an emissions event that started November 12, 2005; PENALTY: $45,597; SEP offset amount of $22,798 applied to Houston-Galveston (AERCO). STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Sonal Enterprises Inc. dba Stop N Joy; DOCKET NUMBER: 2005-0031-PST-E; TCEQ ID NUMBER: RN101903813; LOCATION: 5214 Callaghan Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: $2,850; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200702795
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 2, 2007

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 13, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. August 13, 2007**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: IZ, Inc. dba IZ Food Mart; DOCKET NUMBER: 2006-1825-PST-E; TCEQ ID NUMBER: RN102239035; LOCATION: 699 West Renner Road, Richardson, Collin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 Texas Administrative Code (TAC) §115.244(1) and (3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system; 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain records on-site of all required Stage I and Stage II records pertaining to a underground storage tank (UST) system and make immediately available for inspection by commission personnel; 30 TAC §115.242(3)(A) and (9), and THSC, §382.085(b), by failing to provide and maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order(s), and free of defects that would impair the effectiveness of the system, including, but not limited to absence or disconnection of any component that is a part of the approved system and by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances including tanks, piping, and other ancillary equipment; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sales of petroleum substances used as motor fuel each operating day; PENALTY: $25,000; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200702794
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 2, 2007

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Notice of Water Quality Applications

The following notices were issued during the period of June 28, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

DL UTILITIES, INC. has applied for a major amendment to TPDES Permit No. 12493-001 to authorize the provision of odor control measure, a vegetative barrier, at the wastewater treatment facility instead of ownership of the entire buffer zone area. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 3.5 miles east of the intersection of Farm-to-Market Road 149 and Farm-to-Market Road 1097 in Montgomery County, Texas.

EAGLE MOUNTAIN RV PARK, LLC has applied for a renewal of TPDES Permit No. WQ0012909001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located north of the intersection of Bud Cross Drive and McRee Street, approximately 1.7 miles northwest of the intersection of Farm-to-Market Road 1220 (Morris-Ditto-Newark Road) and East Peden Road in Tarrant County, Texas.

TOWN OF LITTLE ELM has applied for a renewal of TPDES Permit No. 11600-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located approximately 1,000 feet south of Farm-to-Market Road 720 and approximately 2,600 feet east of the intersection of Farm-to-Market Road 720 and Hart Road in Denton County, Texas.

RELIANT PROCESSING GROUP LLC which proposes to operate a carbon dioxide manufacturing, storage and distribution plant called Reliant Processing - Muleshoe Facility, has applied for a new permit,

Proposed Permit No. WQ0004811000, to authorize the disposal of once-through condenser water at a daily average flow not to exceed 4,320 gallons per day via irrigation of 1.95 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located six miles west of Muleshoe on Farm-to-Market Road 1760 in the City of Muleshoe, Bailey County, Texas.

TRUCKER'S CORNER, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014769001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility will be located at 101 Cornelius Road north, in the town of Carl's Corner, on Interstate Highway 35 East, approximately 5 miles north of the City of Hillsboro in Hill County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200702827
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 3, 2007

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Notice of Water Rights Applications

Notices issued June 27, 2007 through June 29, 2007.

APPLICATION NO. 12162; ETC Katy Pipeline, Ltd., 800 East Sonterra Boulevard, Suite No. 400, San Antonio, Texas 78258, Applicant, has applied for a Temporary Water Use Permit to divert and use not to exceed 61.3 acre-feet of water within a period of one year from Lake Charmaine, on an unnamed tributary of Mangus Branch, Neches River Basin for industrial purposes in Trinity, Polk, Tyler and Hardin Counties. The application was received on March 2, 2007, and additional information and fees were received on April 25, 2007. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 2, 2007. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below by July 17, 2007.

APPLICATION NO. 12145; Pat Gerald and LaNell Gerald, 106 College Street, Sulphur Springs, TX 75482, Applicant, have applied for a Water Use Permit to divert not to exceed 35.00 acre-feet of water from White Oak Creek, Sulphur River Basin for storage in an off-channel reservoir and subsequent diversion and use for agricultural (irrigation) purposes in Hopkins County. The application and fees were received on December 14, 2006. Additional information was received on February 26 and April 19, 2007. The application was accepted for filing and declared administratively complete on April 24, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to TCEQ, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200702828
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 3, 2007

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 2, 2007, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Brandy Carter dba Carter's Cleaners; SOAH Docket No. 582-07-1252; TCEQ Docket No. 2006-0772-DCL-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Brandy Carter dba Carter's Cleaners on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200702829

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 3, 2007

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Texas Health and Human Services Commission

Notice of Adopted Reimbursement Rate for Non-State Operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted the following per diem reimbursement rates for non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). The proposed rates and public hearing notice were published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2909).

Payment rates are adopted to be effective June 1, 2007, as follows:

Per Diem Rates for Non-state Operated ICF/MR Services by Level of Need and Facility Size.

Level of Need	8 or Less Beds	9 - 13 Beds	14+ Beds
1 Intermittent	$143.38	$120.37	$93.51
5 Limited	$159.88	$132.49	$105.77
8 Extensive	$182.67	$154.47	$118.45
6 Pervasive	$224.05	$187.18	$164.78
9 Pervasive +	$394.45	$369.85	$365.07

Methodology and justification. The adopted rates in the chart above were determined in accordance with the rate setting methodology codified as Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter D, §355.456(d) (relating to the Rate Setting Methodology for non-state operated facilities). These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). The rate changes are being made to due to increased appropriations by the Legislature for these facilities.

TRD-200702813
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 2, 2007

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Public Notice

The Health and Human Services Commission (HHSC) is submitting notification to the Centers for Medicare and Medicaid Services of the State's termination of the State Children's Health Insurance Program (SCHIP) Demonstration Waiver granted under the authority of Section 1115(a) of the Social Security Act (42 U.S.C. Section 1315(a)). The effective date of the waiver termination is September 1, 2007.

The purpose of this waiver was to allow HHSC to modify the cost-sharing requirement for certain families to enroll in the Children's Health Insurance Program (CHIP). This waiver replaced the CHIP monthly premiums for enrollees above 133 percent of the federal poverty level (FPL) up to and including 150 percent FPL with a semi-annual $25 enrollment fee. The State is terminating this waiver because effective September 1, 2007, this population will be exempt from paying an enrollment fee.

For additional information, please contact Carmen Samilpa-Hernandez, Program Specialist in the Medicaid and CHIP Division, by telephone at (512) 491-1128 or by e-mail at carmen.samilpa-hernandez@hhsc.state.tx.us.

TRD-200702792
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 2, 2007

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 18 to the Texas State Plan for the State Children's Health Insurance Program (SCHIP) under Title XXI of the Social Security Act. The proposed effective date of this amendment is September 1, 2007.

This amendment implements the changes made to Texas CHIP by H.B. 109, 80th Legislature, Regular Session, 2007. This amendment changes the way in which income eligibility for the program is calculated. Currently, an applicant's gross family income is considered in determining eligibility. The amendment changes this calculation to consider an applicant's countable income up to and including 200 percent of the federal poverty level (FPL). Countable income is defined as gross income minus eligible child care expenses. Additionally, the amendment increases the amount of assets that a family can own and still be eligible for CHIP.

The amendment also increases the length of coverage under the program from 6 months to 12 months. The amendment maintains an income eligibility check every 6 months for children with family incomes over 185 percent of FPL and aligns the cost sharing requirements with the new 12-month coverage period. In addition, the amendment eliminates enrollment fees for those families with incomes above 133 percent up to and including 150 percent of FPL. Finally, the amendment eliminates the 3-month waiting period, except for children covered by a health benefits plan at any time during the 90 days prior to the date of application.

HHSC anticipates that the proposed amendment to the State Plan will result in annual aggregate spending of approximately $76,174,083 for Federal Fiscal Year (FFY) 2008, with approximately $51,203,592 in federal funds and approximately $24,970,491 in state general revenue, and annual aggregate spending of approximately $155,858,804 for FFY 2009, with approximately $106,082,654 in federal funds and approximately $49,776,150 in state general revenue.

For additional information, please contact Kendra Sippel in the Acute Care Policy Development Unit for the Medicaid and CHIP Division by telephone at (512) 491-5594 or by e-mail at kendra.sippel@hhsc.state.tx.us.

TRD-200702793
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 2, 2007

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Texas Higher Education Coordinating Board

Request for Proposals for Facilitation of the Texas Course Redesign Project

Purpose: The THECB is requesting Proposals from nonprofit organizations with expertise in developing and delivering courses in a cost-effective manner to facilitate the Texas Course Redesign Project (TCRP). The selected organization will facilitate the redesign of developmental and entry-level academic courses across multiple institutions. The selected organization will teach teams from institutions a methodology for infusing technology into courses and modifying pedagogy and delivery systems to increase learning outcomes and reduce instructional costs.

Authority: §61.0763 of the Texas Education Code requires the Texas Higher Education Coordinating Board to implement a project under which institutions of higher education selected by the board will review and revise entry-level lower division academic courses "to improve student learning and reduce the cost of course delivery." The statute also states that the board shall implement the project "with the assistance of advisory committees and nonprofit organizations with expertise in methodologies for developing and delivering college-level courses in a cost-effective manner." Section 61.0762 of the Texas Education Code requires the Board by rule to "develop incentive programs for institutions of higher education that implement research-based, innovative developmental education initiatives to enhance the success of students".

Eligible Proposals: Nonprofit organizations with expertise in course redesign.

General Selection Criteria: Competitive. Designed to award contract that provides the best overall value to the state. Selection criteria shall be based primarily on project quality, cost, and impact the project will have on successfully managing a set of course redesign projects.

Available Funds: Up to $400,000.

Grant Award: Minimum: None. Maximum: $400,000.

Grant Period: One-year renewable contract from on or about August 1, 2007 to August 31, 2008.

Disbursement: Payment schedule upon receipt of deliverables and dependent on negotiated contract terms.

Carryover Funds: Unencumbered funds may carry over beyond the grant period if specifically authorized by the Coordinating Board.

Application Deadline: Applications must be postmarked (or otherwise dated for overnight delivery by July 27, 2007. Applications may also be received electronically by 5:00 p.m., July 27, 2007. E-mail applications to: kevin.lemoiner@thecb.state.tx.us

More Information: Contact Dr. Kevin Lemoine, Senior Program Director, Instruction and Academic Affairs, Division of Academic Affairs and Research, at (512) 427-6226, or by e-mail at: kevin.lemoine.hetzler@thecb.state.tx.us.

TRD-200702786
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: June 29, 2007

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 779 "$50,000 Maximum Payout"

1.0 Name and Style of Game.

A. The name of Instant Game No. 779 is "$50,000 Maximum Payout". The play style for this game is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 779 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 779.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STAR SYMBOL, DOLLAR BILL SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $200, $2,000, and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 779 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
STAR SYMBOL	AUTO
DOLLAR BILL SYMBOL	WINALL
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY

$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$2,000	TWO THOU
$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 779 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100 or $200.

I. High-Tier Prize - A prize of $2,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (779), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 779-0000001-001.

L. Pack - A pack of "$50,000 Maximum Payout" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$50,000 Maximum Payout" Instant Game No. 779 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$50,000 Maximum Payout" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "star" play symbol, the player wins $100 instantly. If a player reveals a "dollar bill" play symbol, the player wins all 20 prizes shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The "star" (AUTO WIN) symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. The "dollar bill" (WIN ALL) symbol will only appear on intended winning tickets and only as dictated by the prize structure.

D. No more than three (3) matching non-winning prize symbols will appear on a ticket.

E. The YOUR NUMBERS play symbols, with the exception of the "star" (AUTO WIN) and "dollar bill" (WIN ALL) play symbols, will be used an approximately equal number of times as the basis for a win.

F. No duplicate WINNING NUMBERS play symbols on a ticket.

G. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

H. Non-winning prize symbols will never be the same as the winning prize symbol(s).

I. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and $10).

J. The $50,000 prize symbol will appear at least once on every ticket unless otherwise restricted.

K. The "star" (AUTO WIN) symbol will always appear with the $100 prize symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 Maximum Payout" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $50.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$50,000 Maximum Payout" Instant Game prize of $2,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 Maximum Payout" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$50,000 Maximum Payout" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$50,000 Maximum Payout" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 779. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 779 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	739,200	6.82
$10	403,200	12.50
$15	67,200	75.00
$20	84,000	60.00
$25	67,200	75.00
$50	67,200	75.00
$100	3,150	1,600.00
$200	2,310	2,181.82
$2,000	252	20,000.00
$50,000	8	630,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.52. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 779 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 779, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200702719
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 28, 2007

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Texas Department of Public Safety

Request for Grant Proposals - Local Emergency Planning Committee (LEPC) Hazardous Materials Emergency Preparedness (HMEP) Grants

INTRODUCTION: The Governor's Division of Emergency Management (GDEM), acting for the State Emergency Response Commission (SERC), is requesting proposals for Local Emergency Planning Committee (LEPC) Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to Cities/Counties representing LEPCs to further their work in hazardous materials transportation emergency planning.

DESCRIPTION OF ACTIVITIES: LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for communities relating to chemicals, in their use, storage or transit. The U.S. Department of Transportation has made grant money available to enhance communities' readiness for responding to hazardous materials transportation incidents. A grant may be used by an LEPC in various ways, depending on a community's needs.

ELIGIBLE APPLICANTS: Each proposal must be developed by an LEPC, the membership of which is recognized by the SERC, in cooperation with county and/or city governments. The proposal must be approved by a vote of the LEPC. Each LEPC shall arrange for a city or county to serve as its fiscal agent for management of any and all money awarded under this grant.

CERTIFICATION: The fiscal agent must provide certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or authorization to commit funds from the city as appropriate.

BUDGET LIMITATIONS: Total funding for these grants is dependent on the amount granted to the state from the U.S. Department of Transportation. No less than seventy-five percent of the money granted to the state for planning will be awarded to LEPCs. This is the fifteenth of a series of annual grant awards, which will be issued through FY 2008. Grants will be awarded based upon population, hazardous materials risk, need, and cost-effectiveness as judged by GDEM. GDEM will fund eighty percent of the total project cost. Twenty percent of the project cost must be borne by the grantee. Approved in-kind contributions may be used to satisfy this contribution. LEPCs must maintain the same level of spending for planning as an average of the past two years, in addition to the grant.

EXAMPLES OF PROPOSALS:

* Development, improvement, and implementation of the emergency plans required under the Emergency Planning and Community Right-to-Know Act (EPCRA), as well as exercises, which test the emergency plan. Improvement of emergency plans may include hazard analysis as well as response procedures for emergencies involving transportation of hazardous materials including radioactive materials.

* An assessment to determine flow patterns of hazardous materials within a State, between a State and another State or Indian Country, and development and maintenance of a system to keep such information current.

* An assessment of the need for regional hazardous materials emergency response teams.

* An assessment of local response capabilities.

* Conducting emergency response drills and exercises associated with emergency response plans.

* Technical staff to support the planning effort. (Staff funding under planning grants cannot be diverted to support other requirements of EPCRA.)

* Public outreach about hazardous materials training issues such as community protection, chemical emergency preparedness, or response.

* Any other planning project related to the transportation of hazardous materials approved by GDEM.

CONTRACT PERIOD: Grant contracts begin as early as September 1, 2007, and end August 30, 2008.

FINAL SELECTION: The GDEM shall review the proposals. SERC Subcommittee on Planning will make the final selection. The State is under no obligation to award grants to all applicants.

APPLICATION FORMS AND DEADLINE: The "Request for Proposals and Application Package" should be sent via certified/registered mail or other private mail delivery service, requiring a signature to the Texas Department of Public Safety, Governor's Division of Emergency Management, P.O. Box 4087, Austin, Texas 78773-0225. An application may be requested by calling DEM at (512) 424-5985. The original and four copies of the completed application must be received at above address by 5:00 p.m. on August 30, 2007. For more information, please call (512) 424-5985.

TRD-200702737
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: June 28, 2007

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 25, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Ventures, LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34433 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34433.

TRD-200702731
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 28, 2007

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Notice of Application for Amendment to Certificate of Convenience and Necessity for Name Change

Notice is given to the public of an application filed on June 27, 2007 with the Public Utility Commission of Texas for an amendment to a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. d/b/a AT&T Texas to amend its Certificate of Convenience and Necessity for a Name Change to Return to its Historic Name, "Southwestern Bell Telephone Company." Docket Number 34445.

The Application: Southwestern Bell Telephone, L.P. d/b/a AT&T Texas (AT&T Texas or the applicant) filed an application for an amendment to its Certificate of Convenience and Necessity (CCN) Number 40079 for name change only. Applicant stated that AT&T Texas is not changing its certificate name. However, the name of the entity underlying the d/b/a AT&T Texas is changing. Effective June 29, 2007, Southwestern Bell Telephone Company, L.P. will return to its historic name, "Southwestern Bell Telephone Company d/b/a AT&T Texas." Applicant affirmed its intent that the certificate name AT&T Texas will remain unchanged.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by July 25, 2007, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34445.

TRD-200702775
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 2007

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Notice of Application for Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on May 31, 2007, for a certificate of convenience and necessity and certain regulatory clarifications.

Docket Style and Number: Application of Lone Star Transmission, LLC for a Certificate of Convenience and Necessity and Certain Regulatory Clarifications. Docket Number 34362.

The Application: Lone Star Transmission, LLC (Lone Star) stated that this application is solely for the purpose of seeking a certificate of convenience and necessity (CCN) designating Lone Star as an electric utility. Lone Star intends at some date in the future to request an amendment to its CCN for a specific transmission facility. Lone Star also seeks certain clarifying rulings concerning the applicability of various commission rules to Lone Star.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 on or before August 6, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34362.

TRD-200702815
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2007

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Notice of Application for Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 28, 2007, for a certificate of convenience and necessity regarding transmission service in the panhandle portion of the reliability region of the Southwest Power Pool.

Docket Style and Number: Application of ITC Panhandle Transmission, LLC for a Certificate of Convenience and Necessity Regarding Transmission Service in the Texas Panhandle Portion of the Reliability Region of the Southwest Power Pool. Docket Number 34446.

The Application: ITC is seeking to become an electric transmission utility in order to be able to provide electric transmission service to transmission service customers within the Southwest Power Pool (SPP) reliability region in the Texas Panhandle. ITC stated that this application is solely for the purpose of seeking a certificate of convenience and necessity (CCN) designating ITC as an electric utility. ITC noted that no retail service territory and no specific transmission facilities are being request for authorization by this application.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 on or before August 13, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34446.

TRD-200702814
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2007

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Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Kenedy County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 25, 2007, for a certificate of convenience and necessity for a proposed transmission line in Kenedy County, Texas.

Docket Style and Number: Application of American Electric Power Texas Central Company to Amend a Certificate of Convenience and Necessity (CCN) for a 345-kV Double Circuit Transmission Line in Kenedy County, Texas. Docket Number 34298.

The Application: The application of American Electric Power Texas Central Company. (AEP TCC) for a proposed transmission line is designated the Ajo-Zorillo-Sarita 345-kV Transmission Line Project. AEP TCC stated that the proposed transmission line is needed to accommodate two wind energy developers that have provided security to AEP TCC toward the interconnection of 388.4 MW of wind generation along the gulf coast in Kenedy County between Corpus Christi and the lower Rio Grande Valley. The miles of right-of-way for this project will be approximately 21.6 miles in length (preferred route). The estimated date to energize facilities is September 1, 2008.

This application includes facilities subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is August 9, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34298.

TRD-200702772
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 2007

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on June 27, 2007, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.101, 36.001, and 37.154 (Vernon 2007) (PURA).

Docket Style and Number: Joint Application of AEP Texas Central Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for approval of Transfer of a Facility in Nueces County, Docket Number 34443.

The Application: This transaction involves the transfer from AEP Texas Central Company to LCRA Transmission Services Corporation (collectively, Applicants) a transmission facility and associated certificate of convenience and necessity (CCN) rights. The transmission facility proposed for transfer is the rebuilt North Padre Island Tap to Port Aransas Substation located in Nueces County in order to increase the transmission power capacity necessary to continue reliable transmission service in the area. The rebuild consists of 12.4 miles of the approximately 15-mile North Padre Island Tap structure to the Port Aransas Substation 69-kV transmission facility from 4/0 ACSR to 795 ACSS conductor.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 34443.

TRD-200702773
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 2007

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in Hidalgo County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 25, 2007, for a certificate of convenience and necessity for a proposed transmission line in Hidalgo County, Texas

Docket Style and Number: Application of American Electric Power Texas Central Company (AEP TCC) to Amend a Certificate of Convenience and Necessity for a 138 kV Transmission Line in Hidalgo County, Texas. Docket Number 34050.

The Application: The proposed project is designated as the MVEC Goolie Road to AEP TCC El Gato 138-kV Transmission Line Project. AEP TCC stated that the proposed transmission line will connect the proposed Magic Valley Electric Cooperative, Inc. (MVEC) Goolie Road Substation and AEP TCC's proposed El Gato Substation. AEP TCC stated that new distribution substations in this area are necessary to meet the growing electric load. The miles of right-of-way for this project will be approximately 5.0 to 6.3 miles in length, depending on what route is selected. The estimated date to energize facilities is May 8, 2009.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is August 9, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34050.

TRD-200702771
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 2007

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Notice of Application to Amend Certificated Service Area Boundaries in Deaf Smith County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 26, 2007, for an amendment to certificated service area boundaries within Deaf Smith County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company, an Xcel Energy Company, to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception within Deaf Smith County. Docket Number 34439.

The Application: Southwestern Public Service Company (SPS) requests a service area exception to provide service to a specific customer located within the certificated service area of Deaf Smith Electric Cooperative, Inc. (DSEC). DSEC is in full agreement with the territory amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than July 20, 2007, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34439.

TRD-200702774
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 2007

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Texas Residential Construction Commission

Notice of Applications for Registration as Approved Third-Party Warranty Company

The Texas Residential Construction Commission adopted rules regarding the approval and registration of third-party warranty companies at 10 TAC §§303.250-303.266. The new rules were adopted pursuant to under new Chapter 430, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides that builders may elect to provide warranties through third-party warranty companies approved by the commission. The commission rules for approval and registration of third-party warranty companies can be found on the commission's website at www.trcc.state.tx.us.

10 TAC §303.255 requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. Approved third-party warranty companies will be listed on the commission's website.

Pursuant to 10 TAC §303.255 the commission hereby notices the application of:

Quality Builders Warranty Corporation, 325 North Second Street, Wormleysburg, PA 17043. The applicant has identified Joseph M. Olshefski, 325 North Second Street, Wormleysburg, PA 17043 as its registered agent.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13509, Austin, TX 78711-3509. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Quality Builders Warranty Corporation" in the subject line. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register.* Thereafter, the comments will not be considered as timely filed.

TRD-200702718
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: June 27, 2007

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Office of Rural Community Affairs

Public Notice--Community Development Fund (CD), Community Development Supplemental Fund (CDS), Planning and Capacity Building Fund (PCB), Colonia Construction Fund (CFC), and Non-Border Colonia Fund (NBC) Awards

The following is a list of the 2007 CD, CDS, and PCB awardees:

Alamo Area Council of Governments

Community Development Fund Awardees:

Charlotte

Karnes County

Kendall County

Natalia

Pearsall

Runge

Community Development Supplemental Fund Awardees:

Bandera

Dilley

Kenedy

Lytle

Non-Border Colonia Fund Awardees:

Guadalupe County

Ark-Tex Council of Governments

Community Development Fund Awardees:

Cass County

Clarksville

Morris County

Queen City

Community Development Supplemental Fund Awardees:

Cooper

Cumby

Brazos Valley Council of Governments

Community Development Fund Awardees:

Buffalo

Leon County

Somerville

Community Development Supplemental Fund Awardees:

Jewett

Capitol Area Council of Governments

Community Development Fund Awardees:

Dripping Springs

Elgin

Giddings

Lockhart

Community Development Supplemental Fund Awardees:

Bastrop County

Johnson City

Non-Border Colonia Fund Awardees:

Bastrop County

Coastal Bend Council of Governments

Community Development Fund Awardees:

Brooks County

Jim Wells County

Refugio

Taft

Community Development Supplemental Fund Awardees:

Bayside

Woodsboro

Planning and Capacity Building Fund Awardees:

Austwell

Sinton

Colonia Construction Fund Awardees:

Bee County

Brooks County

Jim Wells County

Kleberg County

McMullen County

San Patricio County

Central Texas Council of Governments

Community Development Fund Awardees:

Evant

Holland

Lometa

Community Development Supplemental Fund Awardees:

Buckholts

Hamilton

Concho Valley Council of Governments:

Community Development Fund Awardees:

Melvin

Menard

Sterling City

Community Development Supplemental Fund Awardees:

Irion County

Deep East Texas Council of Governments

Community Development Fund Awardees:

Corrigan

Diboll

Joaquin

Kirbyville

Nacogdoches

Nacogdoches County

Community Development Supplemental Fund Awardees:

Grapeland

Huntington

Onalaska

East Texas Council of Governments

Community Development Fund Awardees:

Alba

Alto

Bullard

Elkhart

Emory

Gun Barrel City

Jacksonville

Point

Community Development Supplemental Fund Awardees:

Carthage

Kilgore

Van

Winnsboro

Wood County

Planning and Capacity Building Fund Awardees:

Alba

Big Sandy

Gladewater

Pittsburg

Golden Crescent Regional Planning Commission

Community Development Fund Awardees:

Goliad

Smiley

Yorktown

Community Development Supplemental Fund Awardees:

Seadrift

Houston-Galveston Area Council

Community Development Fund Awardees:

Angleton

Daisetta

Eagle Lake

New Waverly

Palacios

Community Development Supplemental Fund Awardees:

Bay City

Galveston County
Montgomery
Planning and Capacity Building Fund Awardees:
Hempstead
Hitchcock
Palacios
Heart of Texas Council of Governments
Community Development Fund Awardees:
Iredell
Mount Calm
Walnut Springs
Community Development Supplemental Fund Awardees:
Covington
Valley Mills
Planning and Capacity Building Fund Awardees:
Rosebud
Lower Rio Grande Valley Development Council
Community Development Fund Awardees:
Cameron County
La Feria
Los Fresnos
Primera
Raymondville
Community Development Supplemental Fund Awardees:
Indian Lake
Rio Hondo
Colonia Construction Fund Awardees:
Cameron County
Hidalgo County
Middle Rio Grande Valley Development Council
Community Development Fund Awardees:
Crystal City
Eagle Pass
Leakey
Rocksprings
Val Verde County
Community Development Supplemental Fund Awardees:
Cotulla
Uvalde County
North Central Texas Council of Governments
Community Development Fund Awardees:
Celeste
Commerce
Dublin
Italy
Kemp
Lone Oak
Mineral Wells
Venus
Wolfe City
Community Development Supplemental Fund Awardees:
Celina
Johnson County
Kaufman
Maypearl
Princeton
Tolar
Planning and Capacity Building Fund Awardees:
Aurora
Boyd
Kaufman
NORTEX Regional Planning Commission
Community Development Fund Awardees:
Bryson
Chilicothe
Electra
Paducah
Community Development Supplemental Fund Awardees:
Archer City
Byers
Planning and Capacity Building Fund Awardees:
Bowie
Permian Basin Regional Planning Commission
Community Development Fund Awardees:
Balmorhea
Pecos
Seagraves
Community Development Supplemental Fund Awardees:
Dawson County
Planning and Capacity Building Fund Awardees:
McCamey
Colonia Construction Fund Awardees:
Ector County
Panhandle Regional Planning Commission
Community Development Fund Awardees:
Gruver

Hart

Sunray

Turkey

Community Development Supplemental Fund Awardees:

Armstrong County

Happy

Ochiltree County

Rio Grande Council of Governments

Community Development Fund Awardees:

Brewster County

Dell City

Hudspeth County

Presidio Conty

Vinton

Community Development Supplemental Fund Awardees:

Jeff Davis County

Marfa

Planning and Capacity Building Fund Awardees:

Dell City

Colonia Construction Fund Awardees:

Presidio County

Southeast Texas Regional Planning Commission

Community Development Fund Awardees:

China

Hardin County

Vidor

Community Development Supplemental Fund Awardees:

Sour Lake

South Plains Association of Governments

Community Development Fund Awardees:

Morton

Petersburg

Ropesville

Smyer

Community Development Supplemental Fund Awardees:

Hockley County

Roaring Springs

South Texas Development Council

Community Development Fund Awardees:

Jim Hogg County

Starr County

Community Development Supplemental Fund Awardees:

Rio Grande City

Colonia Construction Fund Awardees:

Zapata County

TEXOMA Council of Governments

Community Development Fund Awardees:

Bonham

Leonard

Lindsay

Van Alstyne

Whitewright

Community Development Supplemental Fund Awardees:

Gunter

Howe

Planning and Capacity Building Fund Awardees:

Bonham

West Central Texas Council of Governments

Community Development Fund Awardees:

Gustine

Rising Star

Weinert

Winters

Community Development Supplemental Fund Awardees:

Anson

Clyde

Woodson

Appeals must be submitted in writing to the Texas Community Development Block Grant Program of the Office of Rural Community Affairs no later than 30 days after the date this announcement is published in the Texas Register. In addition, timely appeals not submitted in writing at least five working days prior to the next regularly scheduled meeting of the state review committee will be heard at the subsequent meeting of the state review committee. The Office staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the state review committee at its next regularly scheduled meeting. The state review committee will make a final recommendation to the executive director of the Office. The decision of the executive director of the Office is final.

If the appeal concerns a non-border colonia or colonia construction fund the appeal must be submitted in writing to the Office no later than 30 days after the date this announcement is published in the *Texas Register*. Office staff, when appropriate, will evaluate the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the executive director. The executive director then considers the appeal within 30 days and makes the final decision.

In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning a community development, community development supplemental, or planning/capacity building fund application is rejected, the office notifies the applicant of its decision, including the basis for rejection after the meeting of the state review committee

at which the appeal was considered. If the appeal concerns a non-border colonia or colonia construction fund application, the applicant will be notified of the decision made by the executive director within ten days after the final determination by the executive director.

Appeals may be submitted to:

Office of Rural Community Affairs

Texas Community Development Block Grant Program

P.O. Box 12877

Austin, Texas 78711

Please contact Heather Lagrone at (512) 936-6701 or via email at hlagrone@orca.state.tx.us with any questions you may have regarding this information.

TRD-200702831
Mark Wyatt
Director, Community Development
Office of Rural Community Affairs
Filed: July 3, 2007

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South East Texas Regional Planning Commission

Request for Proposal

The South East Texas Regional Planning Commission-Metropolitan Planning Organization (SETRPC-MPO) is in the process of conducting a Transit Development Plan. The SETRPC-MPO is seeking a qualified consulting firm to assist in conducting this Plan in the Jefferson-Orange-Hardin Regional Transportation Study (JOHRTS) area for and including Beaumont Municipal Transit(BMT) and Port Arthur Transit (PAT).

A. Background

The two largest cities in the three-county southeast Texas planning area own and operate transit systems within their metropolitan areas. The two systems, BMT and PAT both operate fixed-route and demand-response services.

Within both systems over a recent ten-year period, the demand response services have been stable in terms of passengers served and operating costs. The fixed-route services; however, have been declining in ridership while experiencing rising operating costs.

B. Objectives

It is intended to develop a Transit Development Plan (TDP) for the two metropolitan areas. The TDP is intended to present the service needs and corresponding financial plan necessary to meet projected needs of the two transit agencies.

The TDP will investigate three primary areas, those being operations, equipment, and facility needs. Each of these three objectives, in turn, will look at two time horizons; near term (0-4 years) and short range (5-10 years).

This TDP development will study current and projected conditions, identify current strengths and weaknesses, consider possible actions to assure a stable supply of transit sufficient to address mobility needs within the metropolitan areas, meet environmental objectives, and fit within identifiable, attainable financial resources. The study will determine whether the services could be strengthened in ways that would better serve existing and potential transit users. The outcome of the study could be a specific transit service policy to be adopted by the two cities, actions with regard to financing, appropriate adjustment of fixed route and demand response transit services, and plans for continued monitoring and revision of the services in future years, as consistent with adopted policy.

If your firm is interested and qualified to complete this Transit Development Plan, please contact our office to express your interest or download a copy of the RFP package from our website:

Bob Dickinson, Director

Transportation and Environmental Resources

South East Texas Regional Planning Commission

2210 Eastex Freeway

Beaumont, Texas 77703

Fax: (409) 729-6511

Email: bdickinson@setrpc.org

Website: http://www.setrpc.org/images/stories/Transportation/RFP_Transit_Development_Plan_for_Web.pdf

All responding firms will receive a complete Request for Proposal package. **Final proposals will be due by 12 noon CST on Thursday, August 23, 2007.**

TRD-200702778
Pete De La Cruz
Acting Executive Director
South East Texas Regional Planning Commission
Filed: June 29, 2007

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Texas A&M University System Board of Regents

Award of Consulting Contract

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The Texas A&M University System furnishes this notice of consultant contract award. The consultant will provide investment consulting services for The Texas A&M University System. A notice for request for proposals was published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1675).

One, six-year contract was awarded to Fund Evaluation Group, LLC, c/o Mr. David Stein, 144 Star View Drive, Rexburg, Idaho 83440 with compensation determined as a percentage of invested assets, net of debt proceeds. The beginning date of the contract is August 1, 2007 and the ending date is July 31, 2013 with an option to extend for one additional year.

Selection criteria were based on demonstrated competence and qualifications, including experience with similar clients, and references. Proposals were received before 5:00 p.m. on April 6, 2007.

The investment consultant will provide preliminary performance reports each month and quarterly manager review reports for each calendar quarter.

The necessity of these investment consulting services has been affirmed by The Texas A&M University System since the required resources needed for these services are not available within The Texas A&M University System or any other known agency of the State of Texas.

TRD-200702721
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University System Board of Regents
Filed: June 28, 2007

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Lumberton Municipal Utility District, P.O. Box 8065, Lumberton, Texas 77657, received April 27, 2007, application for financial assistance in the amount of $4,645,000 from the Texas Water Development Fund.

City of Roma, 77 Convent Street, Roma, Texas 78584, received May 4, 2007, application for financial assistance in the amount of $573,300 from the Economically Distressed Areas Program.

Texas A&M University--Research Foundation, 3578 TAMU, College Station, Texas 77843-3578 received April 18, 2007, application for financial assistance in an estimated amount of $48,269 from the Research and Planning Fund.

Texas A&M University--Research Foundation, 3578 TAMU, College Station, Texas 77843-3578 received April 18, 2007, application for financial assistance in an estimated amount of $89,306 from the Research and Planning Fund.

URS, 2900 Amberglen Boulevard, Austin, Texas 78729 received April 18, 2007, application for financial assistance in an estimated amount of $70,000 from the Research and Planning Fund.

Baylor University, Center for Spatial Research, One Bear Place, #97351, Waco, Texas 76798 received April 18, 2007, application for financial assistance in an estimated amount of $93,052 from the Research and Planning Fund.

Texas Cooperative Extension, 3000 Briarcrest Drive, Suite 101, Bryan, Texas 77082 received April 18, 2007, application for financial assistance in an estimated amount of $80,216 from the Research and Planning Fund.

Turner Collie & Braden, P.O. Box 130089, Houston, Texas 77219 received April 18, 2007, application for financial assistance in an estimated amount of $199,215 from the Research and Planning Fund.

Texas A&M University--Texas Engineering Experiment Service, Texas A&M University, 332 Wisenbaker Engineering, College Station, Texas 77843 received April 18, 2007, application for financial assistance in an estimated amount of $13,900 from the Research and Planning Fund.

HDR Engineering, 3000 South IH 35, #400, Austin, Texas 78704 received April 18, 2007, application for financial assistance in an estimated amount of $100,000 from the Research and Planning Fund.

Brazos River Authority, P. O. Box 7555, Waco, Texas 76714 received April 18, 2007, application for financial assistance in an estimated amount of $145,000 from the Research and Planning Fund.

Freese & Nichols, Inc., 4055 International Plaza, Fort Worth, Texas 76109-4895 received April 18, 2007, application for financial assistance in an estimated amount of $100,000 from the Research and Planning Fund.

Freese & Nichols, Inc., 4055 International Plaza, Fort Worth, Texas 76109-4895 received April 18, 2007, application for financial assistance in an estimated amount of $100,000 from the Research and Planning Fund.

URS Corporation, 9400 Amberglen Boulevard, Austin, Texas 78729 received April 18, 2007, application for financial assistance in an estimated amount of $98,000 from the Research and Planning Fund.

R. J. Brandes Company, 4900 Spicewood Springs Road, Austin, Texas 78759 received April 18, 2007, application for financial assistance in an estimated amount of $99,381 from the Research and Planning Fund.

Texas A&M University--Agriculture Experiment Station, Mail Stop 2147, College Station, Texas 77843-2147 received April 18, 2007, application for financial assistance in an estimated amount of $95,000 from the Research and Planning Fund.

Texas A&M University--Texas Engineering Experiment Service, Texas A&M University, 332 Wisenbaker Engineering College Station, Texas 77843 received April 18, 2007, application for financial assistance in an estimated amount of $80,300 from the Research and Planning Fund.

University of Texas--Bureau Economic Geology, Box X, University Station, Austin, Texas 78758 received April 18, 2007, application for financial assistance in an estimated amount of $99,493 from the Research and Planning Fund.

TRD-200702818
Marisol Saenz
Attorney
Texas Water Development Board
Filed: July 2, 2007

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Request for Proposals for Groundwater Quality Analysis Services

SCOPE. The State of Texas, by and through the Texas Water Development Board (TWDB) seeks Groundwater Quality Analysis Services (Services) in accordance with the specifications contained in the Request for Proposal (RFP).

In particular, the Services requested to be provided under any contract(s) awarded as a result of this RFP are for Services during the State of Texas Fiscal Year beginning September 1, 2007, and ending August 31, 2008 (FY 2008). The contract for Services may be renewed for up to one year (September 1, 2008 and ending August 31, 2009), provided all terms and conditions remain in full force and upon mutual agreement of both parities.

The total period for the Services, including any renewals, will not exceed a maximum combined period of two years.

ESTIMATED COMPENSATION. Not to exceed $384,000 for FY 2008.

EVENT DATES (Central Daylight Saving Time).

Issue RFP: July 13, 2007

Deadline for Submission of RFP: 5:00 p.m., July 30, 2007

Expected Award of Contract: August 28, 2007

Expected Contract Start Date: September 1, 2007

Complete details and instructions for submitting a Request for Proposals, please visit TWDB's webpage at http://www.twdb.state.tx.us under "Hot Topics." If you do not have access to the internet, please contract Tina Newstrom, TWDB Purchaser, at (512) 463-7825.

TRD-200702810
Marisol Saenz
Attorney
Texas Water Development Board
Filed: July 2, 2007

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Request for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of contracts for groundwater availability models and related work for the Capitan Reef Complex, Gulf Coast, Seymour, and Yegua-Jackson aquifers. Guidelines for Statements of Qualifications, which include an application form and more detailed research topic information, will be supplied by the TWDB upon request.

Description of Research Objectives

Since 1999, the Texas Legislature has approved funding for the Groundwater Availability Modeling Program. The purpose of the Groundwater Availability Modeling Program is to provide reliable and timely information on groundwater availability to the citizens of Texas to ensure adequate supplies or recognize inadequate supplies over a 50-year planning period. Numerical groundwater flow models of the aquifers in Texas will be used to make this assessment of groundwater availability. The development of models for Groundwater Availability Modeling Program (1) includes substantial stakeholder involvement; (2) results in standardized, thoroughly documented, and publicly available numerical groundwater flow models and support data; and (3) is capable of providing predictions of groundwater availability through 2060 based on current projections of groundwater demands during drought-of-record conditions.

In support of the Groundwater Availability Modeling Program, the TWDB is requesting Statements of Qualifications for (1) developing structure for the Capitan Reef Complex Aquifer, (2) developing structure for the Gulf Coast Aquifer from the Brazos River to the Rio Grande, (3) developing a groundwater availability model for the Yegua-Jackson Aquifer, and (4) developing a refined groundwater availability model for the Seymour Aquifer in the Haskell County and Knox County area. A separate Statement of Qualifications for each of the four modeling projects is expected.

Details on the modeling projects and project requirements are available from the TWDB. The TWDB website site includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) some supporting material (http://www.twdb.state.tx.us/assistance/financial/fin_research/research.htm).

Research Objectives for the Structure Projects

The TWDB is seeking separate Statement of Qualifications for (1) developing structure for the Capitan Reef Complex Aquifer and (2) developing structure for the Gulf Coast Aquifer from the Brazos River to the Rio Grande. For the Gulf Coast Aquifer, TWDB expects structure to be developed in a manner similar to the approach used for the LCRA-SAWS Water Project: http://www.lcra.org/docs/lswp/findings/Conceptual_Model_Report_Part_1.pdf . The Gulf Coast Aquifer structure should delineate the Beaumont, Lissie, Willis, Upper Goliad, and Lower Goliad formations. The approach used for the LCRA-SAWS Water Project relied on well-defined stratigraphic boundary markers, aquifer depositional environments, and a detailed, systematic, interpretive process based on depositional facies to identify depositional cycles that connected boundary markers using a carefully defined set of depositional facies.

The objective of these research projects is to have structure surfaces, in digital and geographic information system compatible format, for each of the hydrostratigraphic layers of the aquifers. If possible and applicable, net sand maps should also be delivered.

The following issues need to be addressed in each Statement of Qualifications:

1. the hydrostratigraphy of the study area;

2. approach to delineating structure, including possible resources that encompasses contacting local groundwater conservation districts as well as proposed methodologies;

3. approach to determine net sand thicknesses, if possible and applicable; and

4. how the information will be organized and interpreted in a geographic information system.

Deliverables shall include:

1. maps of the interpreted surfaces;

2. a groundwater availability modeling compatible, ESRI based ArcGIS geodatabase that includes source data by location, final interpreted structure surfaces, net sand, if possible and applicable, reliability factors of source data, and sufficient metadata to duplicate work; and

3. a report documenting the above (hard copy and electronic version).

In addition, we expect potential contractors to indicate their abilities in:

1. general hydrogeology,

2. hydrogeology of the modeled aquifer,

3. geographical information systems,

4. technology transfer,

5. producing high-quality reports, and

6. meeting deadlines.

At a minimum, TWDB staff expects to meet with the project team at the beginning of the project and at the midpoint of the project. A formal talk discussing the results shall be presented to TWDB staff at the end of the project. The Statements of Qualifications shall not be more than nine pages in length (using Times Roman 12 font), excluding qualifications and experience of project staff.

Groundwater availability model of the Yegua-Jackson Aquifer

A research project detailing the geologic structure of the Yegua-Jackson Aquifer is expected to be completed by the fall of 2007. The development of a groundwater availability model for the Yegua-Jackson Aquifer shall incorporate relevant geologic structure data evaluated in this preliminary study. The geologic structure study will provide data for up to four aquifer layers; the Lower-Yegua, the Upper-Yegua, the Lower Jackson, and the Upper Jackson. A technical report of the geologic structure will be available later this fall that summarizes the data and methods used and documents the findings of stratigraphic correlation, structural interpretation, and lithology distribution. Digital deliverables will include the final report, a groundwater availability modeling compatible, ESRI© based geodatabase of well information (well identification, location, log datum, and so on), digitized logs, digital log analysis results, and maps of structure, fault location, sand thickness, and depositional environment for each of the four aquifer layers in geographic information system format. The report will also include several strike and dip cross-sections. Documentation will include three major products: (1) maps in ArcGIS format; (2) a geodatabase of the source data, control data, metadata, and grid data supporting the structure and lithologic maps; and (3) the final report in both Microsoft Word 2003 format and in Adobe Acrobat 7.0 PDF format.

The statement of qualifications for the groundwater availability model for the Yegua-Jackson Aquifer should include a discussion on how many layers is needed to develop a regional scale model but will at a minimum model the Yegua Aquifer as a separate layer from the Jackson Aquifer. The statement of qualifications should also discuss if the

proposal is for developing one continuous model or multiple models to cover, at a minimum, the entire extent of the Yegua-Jackson Aquifer in Texas.

The following issues need to be addressed in the Statement of Qualifications for the groundwater availability model of the Yegua-Jackson Aquifer project:

1. communication between the contractor and the stakeholder advisory forum, regional water planning groups, and groundwater conservation districts located within the study area;

2. conceptual model of recharge and how recharge will be modeled;

3. how surface-water/groundwater interaction will be modeled;

4. how hydraulic properties will be distributed;

5. hydrostratigraphy for the model;

6. approach for modeling the down-dip boundary of the model (if appropriate);

7. approach for calibrating the model;

8. how environmental impacts will be gauged; and

9. how the project will benefit statewide water planning and groundwater districts.

In addition, we expect potential contractors to indicate their abilities in:

1. general hydrogeology,

2. hydrogeology of the modeled aquifer,

3. numerical groundwater flow modeling,

4. geographical information systems,

5. communicating with the public,

6. technology transfer,

7. producing high-quality reports, and

8. meeting deadlines.

The Statement of Qualifications shall not be more than 19 pages in length, excluding qualifications and experience of project staff. Applicants should be familiar with standards and requirements for the groundwater availability models.

Refined groundwater availability model for the Seymour Aquifer in the Knox County and Haskell County area

A regional groundwater availability model of the Seymour and Blaine aquifers was developed in 2004 that includes an upper layer incorporating the remnant areas (pods or islands) of the Seymour Formation and other Quaternary-age alluvium that comprise the Seymour Aquifer and a second layer encompassing the underlying Permian deposits. Characterization of the Blaine Aquifer was presented in greater detail than the other Permian units because it is the most important underlying stratum for water-supply purposes. Additional information on the groundwater availability model for the Seymour Aquifer is available on the TWDB Web site: http://www.twdb.state.tx.us/gam/symr/symr.htm . The topographic relief across the initial study area suggests a grid of one square mile was too coarse to capture the flow dynamics of individual portions of the Seymour Aquifer, especially in the shallower sections of the aquifer. This proposed project will concentrate on refining the mesh over one of the more productive and documented portions of the Seymour Aquifer in the Knox County and Haskell County area. In addition, because of the shallow unconfined characteristics of the aquifer, water levels are responsive to seasonal variations of climate and use. Therefore, instead of annual or a combination of monthly and annual stress periods, the localized model shall use monthly stress periods for the calibration period.

The following issues need to be addressed in the Statement of Qualifications for the localized groundwater availability model of the Seymour Aquifer in the Knox County and Haskell County area:

1. communication between the contractor and the stakeholder advisory forum, regional water planning groups, and groundwater conservation districts located within the study area;

2. conceptual model of recharge and how recharge will be modeled;

3. how surface-water/groundwater interaction will be modeled;

4. how hydraulic properties will be distributed;

5. hydrostratigraphy for the model;

6. approach for modeling the down-dip boundary of the model (if appropriate);

7. approach for calibrating the model;

8. how environmental impacts will be gauged; and

9. how the project will benefit statewide water planning and groundwater districts.

In addition, we expect potential contractors to indicate their abilities in:

1. general hydrogeology,

2. hydrogeology of the modeled aquifer,

3. numerical groundwater flow modeling,

4. geographical information systems,

5. communicating with the public,

6. technology transfer,

7. producing high-quality reports, and

8. meeting deadlines.

The Statement of Qualifications shall not be more than 19 pages in length, excluding qualifications and experience of project staff. Applicants should be familiar with standards and requirements for the groundwater availability models.

Description of Funding Consideration

Up to $1,050,000 has been identified for water research assistance from the TWDB's Research and Planning Fund for the research for these four projects. It should be noted that for some of the proposed projects a portion of the funds will be available prior to September 1, 2008, and the remainder after September 1, 2008.

Projects in support of GAM program

1. Structure for the Capitan Reef Complex Aquifer - **FY2008**: $150,000; **FY2009**: $0.00; **Total**: $150,000

2. Structure for half of the Gulf Coast Aquifer - **FY2008**: $150,000; **FY2009**: $150,000; **Total**: $300,000

3. Develop groundwater availability model for Yegua-Jackson Aquifer - **FY2008**: $200,000; **FY2009**: $200,000; **Total**: $400,000

4. Develop a refined groundwater availability model for the Seymour Aquifer in the Haskell County and Knox County area - **FY2008**: $180,000; **FY2009**: $20,000; **Total**: $200,000

5. **Total: FY2008: $680,000; FY2009: $370,000; Total: $1,050,000**

Following the receipt and evaluation of all Statements of Qualifications, the TWDB may adjust the amount of funding initially autho-

rized for water research. Oral presentations may be required as part of qualification review. However, invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 5:00 PM, August 6, 2007. Statements of Qualifications must be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statements of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Ms. Phyllis Thomas at the preceding address or by calling (512) 463-3154. All technical questions should be directed to Ms. Cindy Ridgeway at (512) 936-2386.

TRD-200702785
Marisol Saenz
Attorney
Texas Water Development Board
Filed: June 29, 2007

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Request for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of contracts for updates and improvements to existing groundwater availability models. Guidelines for Request for the Statements of Qualifications, which include an application form and more detailed research topic information, will be supplied by the TWDB upon request.

Description of Research Objectives

Since 1999, the Texas Legislature has approved funding for the Groundwater Availability Modeling Program. The purpose of the Groundwater Availability Modeling Program is to provide reliable and timely information on groundwater availability to the citizens of Texas to ensure adequate supplies or recognize inadequate supplies over a 50-year planning period. Numerical groundwater flow models of the aquifers in Texas will be used to make this assessment of groundwater availability. The development of models for Groundwater Availability Modeling Program (1) includes substantial stakeholder involvement; (2) results in standardized, thoroughly documented, and publicly available numerical groundwater flow models and support data; and (3) is capable of providing predictions of groundwater availability through 2060 based on current projections of groundwater demands during drought-of-record conditions. Once a groundwater availability model is completed, it is important to be able to revisit the models to incorporate new information or understanding of the aquifers. New hydrogeologic studies are being completed routinely by municipalities, groundwater conservation districts, river authorities, universities, state agencies (including the TWDB), private companies, and others.

In support of the Groundwater Availability Modeling Program, TWDB is seeking Statements of Qualifications from Groundwater Availability Modelers (Contractor) teamed with political subdivisions for work to update and improve existing groundwater availability models with a total matching contribution from TWDB not to exceed $190,000 for fiscal year 2008. These proposed groundwater availability modeling projects shall (1) include stakeholder involvement; (2) use valid, defensible, and documented data and standard scientific modeling procedures; (3) address a legitimate issue, concern, or improvement to the model under consideration; and (4) follow all TWDB groundwater availability modeling protocol and standards, as applicable. Higher consideration shall be given to proposals that address regional scale model updates, provide a reasonable budget for the tasks described in the scope of work, and include at least two public stakeholder meetings (one at the beginning of the project and one after the draft deliverable). Proposed Contractors shall not have a conflict of interest in the modeled area during the tenure of the project.

Details on existing modeling projects and GAM-related project requirements are available from the TWDB. The TWDB Web site includes (1) guidelines for the statement of qualifications, (2) copies of the attachments, (3) a list of Request for Statements of Qualifications Review Criteria, and (4) some supporting material (http://www.twdb.state.tx.us/assistance/financial/fin_research/research.htm).

The following issues need to be addressed in the statement:

* name of the groundwater availability model to be adjusted;

* description of parameter(s) to be updated and why;

* an estimate of how large of an area the update(s) will affect;

* proposed methodology or approach to addressing model update/improvement and re-calibration;

* communication between the contractor and the stakeholder advisory forum, regional water planning groups, other groundwater conservation districts located within the study area, and TWDB staff; and

* total budget, matching fund contribution, and itemized budget broken by tasks.

In addition, we expect potential contractors and sub-contractors to indicate their abilities in:

* general hydrogeology,

* hydrogeology of the modeled aquifer,

* numerical groundwater flow modeling,

* geographical information systems,

* communicating with the public,

* technology transfer,

* producing high-quality reports, and

* meeting deadlines.

The statement of qualifications shall not be more than 15 pages in length, excluding qualifications and experience of project staff. Applicants should be familiar with standards and requirements for the groundwater availability models.

Description of Funding Consideration

Up to $190,000 has been identified for water research assistance from the TWDB's Research and Planning Fund for matching funds contribution from TWDB. Following the receipt and evaluation of all statement of qualifications, the TWDB may adjust the amount of funding initially authorized for water research. Oral presentations may be required as part of the review. However, invitation for oral presentation is not an indication of probable selection. Funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information

Ten double-sided copies of a complete statement of qualifications, including the required attachments, must be filed with the TWDB prior to 5:00 PM, September 10, 2007. Statements of qualifications must be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Request for Statements of Qualification Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Ms. Phyllis Thomas at the preceding address or by calling (512) 463-3154. All technical questions should be directed to Ms. Cindy Ridgeway at (512) 936-2386.

TRD-200702787
Marisol Saenz
Attorney
Texas Water Development Board
Filed: June 29, 2007

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).